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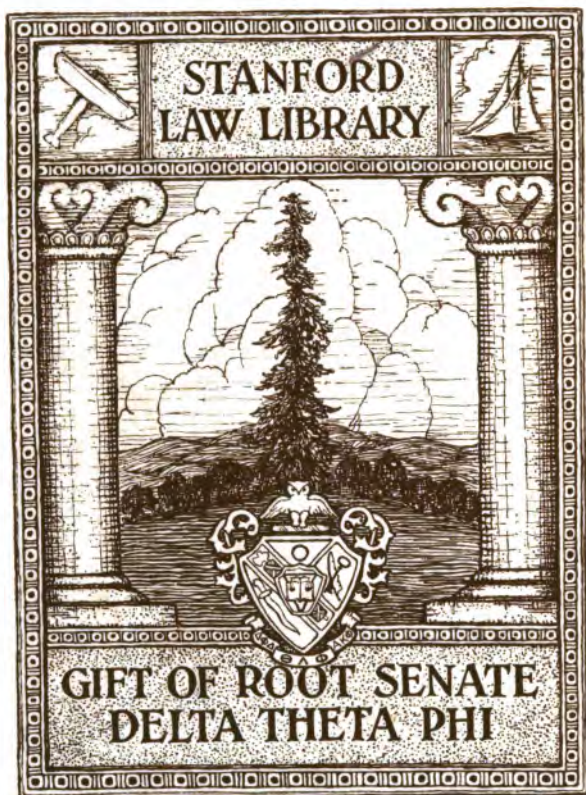
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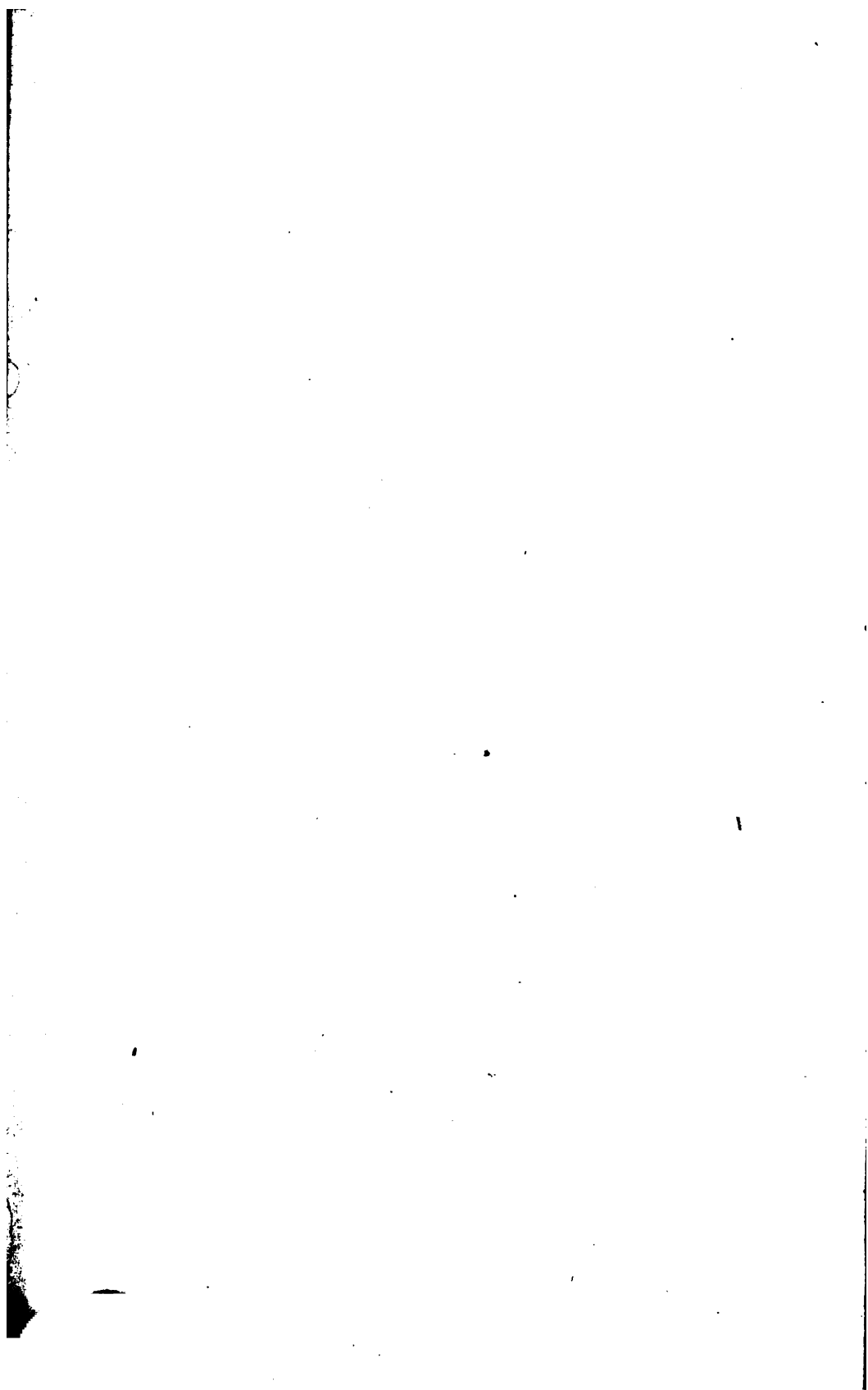
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ABRIDGMENT
OF THE
MARITIME LAW;

COMPRISING

GENERAL AND PARTICULAR AVERAGE, ADJUSTMENT,
ABANDONMENT, BOTTOMRY, COLLISION,
AND SALVAGE.

TO WHICH IS ADDED, THE

General Duties of Masters and Owners,

WITH

A COPIOUS APPENDIX,

CONTAINING

SEVERAL USEFUL AND LEGALLY APPROVED FORMS

BY

FRANCIS B. DIXON,

NOTARY PUBLIC, AVERAGE ADJUSTER, AND INSURANCE BROKER,
NORFOLK, VA.

STANFORD LIBRARY

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PREFACE.

WHEN any one presumes to solicit public notice for a work of a literary nature, the world have a right to know the motives that induced him to write, and upon what he builds his hope that it will be found worthy of their attention.

First. I feel satisfied that the law of insurance is not as fully known as it ought to be, and that both underwriters and owners frequently suffer from the vessel being commanded by a master totally ignorant of the law of insurance; or, it may be, of the vessel, when in distress, being placed in the hands of ignorant or unprincipled agents; or, the owners themselves, at a loss in what manner to proceed for the protection of their own interests, and the interests of all concerned.

Second. That the law of insurance is not more fully known and understood, happens, in a great measure, from such information being scattered through various books of reported cases, and voluminous elementary works, too costly to be possessed by those not professionally engaged in such matters, and which, if obtained, few could spare time, and many would not take the trouble, to wade into.

Third. Convinced of the utility of a work that would em-

brace all points of maritime law that are practically essential, in as few words as possible, at a moderate cost, and in a form easily to be understood, I thought I could not more advantageously employ my time to the interests of the community with which I am daily engaged, than by devoting a portion of it to supplying this deficiency. In how far I have succeeded, the world must judge. I would, however, remark, that no pains or labor has been spared in compiling this work. I believe every necessary point has been touched upon, and every question that might arise, exhausted. It is, therefore, hoped it will be found useful, not only to the class of persons for whom it is particularly designed, but to the Legal Profession, Insurance Agents, and Despacheur of Averages, as a hand-book of reference; and to Notaries and Ship-Brokers a valuable guide, as, in addition to the subject matter, several legally approved and useful forms are given.

F. B. DIXON.

NORFOLK, Va., 1857.

INDEX.

A.

ABANDONMENT.

	no.
Defined,	90
What necessary to constitute a right to abandon,	91, 97
Definition of a total loss,	92, 101
Definition of a constructive or technical total loss,	93
What damages constitute a technical total loss,	94
Within what time abandonment to be made,	95
Assured must elect whether he will abandon or not,	96
Agent who insures may abandon for owner,	98
Mere fear no just cause for abandonment,	99
Where ship has not been heard from,	100
Not permitted for temporary stranding or retardation,	102
Where the ship cannot be restored for want of assistance,	103
When ship encumbered with liens for salvage,	104
After arrival at the port of destination,	105
General rule in the United States as to,	106
Cases where damage may be total, though loss not exceeding fifty per cent.	107
Whether rule refers to value in the policy or to the value of the ship,	108
Where master has proceeded to make complete repairs,	109
Where partial repairs have been made,	110
Deduction of a third,	111
Effect of the sale of the ship,	112
Obligation to tranship cargo,	113
Definition of the term "innavigability,"	114
Total loss of goods,	115
Definition of the term "stranding,"	117
Effect of abandonment legally made,	118
No particular form necessary,	119
Freight,	120
Memorandum articles,	121
See important decision of Judge Duer as to abandonment,	122
Form of notice of,	325

ADJUSTMENT.

	no.
Definition,	25
Estimate of property sacrificed,	26
Rule of contribution,	27, 40
Value of ship in contribution,	29
Contribution of the cargo,	28, 40
Value at the port of discharge is the basis,	28, 40
Estimated value of the ship when lost,	30
Estimated value of the ship when sold in a foreign port,	32
Equipment of the ship, how estimated,	31
Place of adjustment,	33
Master not compelled to part with the cargo before contribution made or secured,	34, 35, 36
Contribution of freight,	37, 40
Where freight payable only on the contingency of the ship's delivering a return cargo,	39
Deduction of a third,	38
Adjustment in a foreign port,	41
Adjustment of salvage loss,	68
Liability of Underwriters as to general average,	42, 43
Underwriters not liable for contribution made by mistake,	44

AGENT.

Commissions of,	64
Who insures, may abandon for principal,	98

AVERAGE AGREEMENT.

Form of,	304
--------------------	-----

AGREEMENT.

Form of, to build a ship,	318
Form of, for owning and sailing a vessel in copartnership,	322

AVERAGE, GENERAL.

Defined,	1
Jettison,	3
Extra charges in port of necessity,	4
Unloading cargo in port of necessity,	5
Expense of floating ship,	6
Pilotage into port of necessity,	7
Hire of extra hands to pump,	8
Bringing a distressed ship into port,	9
Noting protest, etc.	10
Voluntary stranding to avoid shipwreck,	11
Cutting away sails, ropes, etc.	16
Damage to ship,	15
Wages and provisions of crew, etc.	12, 13, 14
Rigging cut away to get rid of mast hanging over the side,	17

AVERAGE, GENERAL, *continued.*

	no.
Loss of sails by carrying a press,	18
Boats carried away from ring-bolts, etc.	19
On freight,	20
Ships running foul of each other,	21
Quarantine charges,	22
Damage by fire,	23
Money raised for repairs,	24

AVERAGE, PARTICULAR.

Definition,	2
By whom a particular average loss is to be borne,	45
Distinction between, and partial loss,	46
Mode of adjustment of,	47, 50, 51
Premium of insurance part of the value of the goods,	48
Partial loss, how adjusted,	49, 50, 51
Principal losses that belong to,	52
Repairing of parts of the ship injured, when,	53
Expenses for which the underwriters are liable,	54, 55, 56
Wages and provisions of crew,	57
Deduction of one-third,	58, 63
Deduction of a third where ship is perfectly new,	59
Deduction on copper sheathing,	60
Deduction on chain cables,	61
Deduction on anchors,	62
Commissions of an agent,	64
Sale of old materials,	65
Adjustment of salvage loss,	68
Freight,	69
By loss of ship,	69
By loss of cargo,	70
On cargo sold at intermediate port,	73
When freight <i>pro rata</i> is earned,	71, 72
Where master delivers up cargo to shipper before repairs are made,	74
Of the memorandum,	76
Average exceptions in Boston,	77
Average exceptions in New York,	78
Average exceptions in Baltimore,	79
Average exceptions in Charleston,	80
Average exceptions in Philadelphia,	81
Intention of the memorandum,	82
Underwriters not liable for partial loss under five per cent.	83
Meaning of the words, "warranted free from average unless general,"	84
Meaning of the words, "unless general,"	85
Meaning of the words, "or the ship be stranded,"	86
Rule as to storage, reloading, and other expenses of saving,	87
Successive losses cannot be combined to make the underwriters liable,	88
Surveys, etc.	89

ANCHORS.

	no.
As to deducting a third for new, upon,	62

B.**BARRATRY.**

Definition of,	275, 276
Mere breach of contract on the part of the master not,	277
The act of a freighter under a general charter-party cannot be treated as,	278
Effect of, upon a policy of insurance,	279, 280

BILL OF LADING.

Construction of,	266, 269, 270
Form of,	316
Form of protest for refusing to sign, for goods shipped at the freight contracted,	327

BOTTOMRY.

Defined,	123
What necessary to constitute a valid bottomry bond,	124
By master, when valid,	125
Void when ship is lost,	126
Distinction between, and Respondentia,	127
Rules applicable to both,	128
To what risks lender on, exposed,	129
May be insured,	130
On cargo, power of master as to,	131
Not defeated by sale of the vessel,	132
Insurable interest of borrower in,	133
Master cannot pledge ship and personal credit of his owners,	134
Party indebted to owners cannot take,	135
No settled form of,	136
May be given to consignees of cargo,	138
Requisites of,	136
By master appointed by consignees themselves,	138
Necessity which will justify a master in giving a,	125
Distinction between home and foreign port,	139
May be given in home port, when,	139
What libellant to prove on suits on,	140
May be good in part, and bad in part,	141
Difference between and simple loan,	142
Marine interest requisite to,	143
Freight, when pledged, construction of,	144
Where master may pledge ship, he may pledge freight also,	131
May be on time, as well as on a specific voyage,	123
Can only be made by actual master,	145
Not bound to apply shipper's money before resorting to,	146
Form of a bottomry bond, by a shipmaster, for repairs executed on his arrival in a foreign port,	137

C.

CARGO.

	no.
Unloading of, in port, of necessity,	4
Contribution of.—See <i>Adjustment</i> .	
Master not compelled to part with, before contribution made or secured,	34, 35, 36
Power of master to bottomry,	131
Master and owners liable for cargo lost or damaged through carelessness,	205
Duty of master as to taking cargo on board,	216
Laden on deck,	217, 218, 219
Transportation of, in another vessel,	222
When forwarded in another vessel may be charged with increased freight,	223, 225
Shipper cannot claim cargo at intermediate port without paying full freight,	226
Where cargo is so injured as to endanger the safety of the ship and other cargo,	227
As to disposal of, in case of necessity,	230, 231
Hypothecation of, by the master,	232
As to the sale of part of, for repairs, etc.	233
Master liable for injury to, by improper stowage,	262, 269

CHAIN CABLES.

As to deducting a third for new upon,	61
---	----

CHARTER-PARTY.

Of the instrument of contract by,	267, 269, 270
Form of,	311
Protest for not executing charter-party according to memorandum of agreement,	326
Protest for breach of,	328

COLLISION.

When in tow of steam-boat,	147
What libellant must prove,	148
Damage by, through fault of one vessel,	149
Damage by, through fault of both vessels,	150
Hanging out lights,	151
Damage by, particular average,	152
Insurer liable for damage by,	153
Insurer cannot compel the owner to sue for damage by,	154
Insurer not liable for damage done to other vessels,	155
Rule of navigation when crossing in opposite directions,	156
Duty of a vessel entering a harbor,	157
Proper place at which to station a watch,	158
Rule of navigation when anchored in an improper place,	159

COLLISION, *continued*.

	no
Rule to be observed by sailing vessels generally, . . .	161
Rule to be observed by steamers, . . .	162
"Giving way," explanation of, . . .	163
Full compensation to be made for damage sustained by, . .	164
Rule of deducting one-third does not apply to, . . .	165
Rule for allowance for loss of freight, etc., by, . . .	166
Consequential damages, . . .	167
Costs in cases of, by whom to be paid, . . .	168

COMMON CARRIER.

Master of ship answerable as, . . .	240
No distinction in law, between carrier by land and by water,	261

COPPER SHEATHING.

As to deducting a third for new, for repairs of, . . .	60
--	----

CONTRIBUTION.

Rule of, . . .	27, 40
Value of ship in, . . .	29
Of cargo, . . .	28, 40

D.

DERELICT.

What salvage allowed in cases of, . . .	173
When property is, . . .	174, 175

DEVIATION.

What is, as understood in a policy of insurance, . . .	281
Effect of, by the master from the direct course of his voyage, .	260, 282
Effect given to the words <i>touch</i> , or <i>touch and stay</i> , . . .	284
The course that a master is bound to pursue when there are several ports of discharge mentioned in the policy, . . .	285
Distinction between an <i>alteration</i> of a voyage and a, . . .	286
If the ship, after having deviated, returns to the proper course, and while pursuing that course a loss happens, insurer not liable, . . .	288
In what cases voluntary deviations will be justified, . . .	283
Will mere delay amount to deviation, . . .	289

E.

ENROLLMENT.

For coasting trade and fisheries, . . .	293, 296, 297
Form of a bill of sale of an enrolled ship, . . .	313

INDEX.

xi

EUROPEAN COINS.

Reduced to dollars and cents,	no. 317
---	------------

F.

FREIGHT.

As to, in general average,	29
Contribution of,	37, 40
When payable only on the contingency of the ship delivering a return cargo,	39
Particular average on.—See <i>Average, Particular</i> ,	69
Where loss of ship,	69
Where loss of cargo,	70
On cargo sold at intermediate port,	73
Where freight <i>pro rata</i> is earned,	71, 72
Where master delivers up cargo to shippers before repairs are made,	74
When to contribute for salvage,	191
Master may retain freight for money expended for repairs,	210
Master cannot pledge freight to raise money for private purposes,	212
Extra freight may be charged when cargo is forwarded in another vessel,	223, 225
Rule for ascertaining such extra or increased freight,	224
Shipper cannot claim cargo at intermediate port without paying full freight,	226
Form of agreement for freight of a ship,	315

FIRE.

Loss by,	23
--------------------	----

G.

GENERAL AVERAGE.—See *Average, General*.

H.

HYPOTHECATION.

Of cargo by the master,	232
-----------------------------------	-----

I.

INNAVIGABILITY.

Defined,	114
--------------------	-----

J.

JETTISON.

Defined,	3
--------------------	---

L.

LIBEL.

	no.
Form of, in a suit <i>in Rem.</i> for labor, materials, or supplies furnished in repairing, fitting out, or furnishing a foreign maritime vessel,	330
Form of, in a suit <i>in Rem.</i> by a mariner for wages,	321

M.

MASTER AND OWNERS.

Master not considered the general agent of the owners,	200
Master can only settle claims against the ship as accrue time he is master,	200
Ship and freight bound for every act within his authority, . . .	200
Incidental powers of master,	200
Master may charter the ship in a foreign country when the owner has no agent there,	201
Master has not power to purchase cargo on owners' account, . .	202
Master cannot bind the owners by charter-party so as to subject them to action of covenant,	203
Of the authority of the master to purchase supplies for the ship, .	204
Master as well as owners responsible for goods lost through carelessness,	205
Owner not responsible where master hires the ship agreeing to victual, man her, etc.	206
Authority of master as to procuring repairs in a foreign port, . .	207
What are necessary repairs,	208
If bills drawn on owners for repairs are dishonored, action will lie against them,	209
Master may retain freight for money expended by him for repairs, .	210
Master cannot alter contract made by owners,	211
Master cannot pledge freight to raise money for private purposes, .	212
Liability of owners for acts of the master,	213, 214
Master must devote his whole time to the ship,	215
His duty as to taking cargo on board,	216
Of goods laden on deck,	217, 218, 219
Wharfinger has a lien on the vessel for wharfage,	220
Duty of master as to cargo, in case of accident or damage to the ship,	221
Transportation of cargo in another vessel,	222
Cargo forwarded in another vessel may be charged with increased freight,	223, 225
Rule for ascertaining such extra or increased freight,	224
Shipper cannot claim cargo at intermediate port without paying full freight,	226
Duty of the master, where cargo is so injured as to endanger the safety of the ship and other cargo,	227
In case of distress, master agent for all concerned,	228

MASTER AND OWNERS, *continued.*

NO.

Meaning of the rule, Must do his " <i>best for the benefit of all concerned</i> ,"	229
As to disposal of cargo in case of necessity,	230, 231
Hypothecation of cargo by the master,	232
As to sale of part of the cargo for repairs, etc.	233
Necessity for taking a pilot,	235
As to sale of ship by the master,	234, 259
Duty of master to his owners, and whether responsible for error of judgment,	236
Whether owners may dismiss master at their pleasure,	237
When officers and crew may refuse to go in the ship,	238
Law as to providing medicine chest,	239
Master answerable as common carrier,	240
Owner not liable where ship let to master on shares,	241
Meaning of the phrase, " <i>Perils of the sea</i> ,"	242
Underwriters liable for perils of the sea,	243
Loss by rats considered as perils of the sea,	244
But not by worms,	245
Law as to ship's articles,	246
Owners liable for wages of seamen, though his name not stated in the shipping articles,	247
Seamen's claim for wages preferred in admiralty to all other charges,	248
How lien for wages may be enforced against freight,	249
As to right of seamen to sue master and owners,	250
Master only liable for wages time he is actually master,	251
So, also, owner,	252
Owners' liable for wages, though ship let to master, if he pays them a portion of his earnings,	253
Underwriters' liability for seamen's wages in case of abandonment,	254
Does an abandonment change the character of the master,	255
Masters' remedy for recovery of wages,	256, 257
Ship's husband,	258
What circumstances of distress will enable a master to convey an indefeasible title to his ship,	259
Effect of deviation by the master from the direct course of the voyage,	260
No distinction in law between carrier by land and by water,	261
Master liable for injury done to cargo by improper stowage,	262
Meaning of the term, " <i>seaworthy</i> ,"	263
Ship must be seaworthy at the time of departure,	264
Ship must be fit for the trade in which she is to be employed,	265
Of contract by <i>bill of lading</i> ,	266
Of contract by <i>charter-party</i> ,	267
Contents of the charter-party,	268
Bill of lading to be also given,	269
Rights and obligations of parties to contract by charter-party the same as by bill of lading,	270

MASTER AND OWNERS, *continued.*

	no.
In suits in admiralty, who are <i>material men</i> ,	271
Are wages of mariners insurable,	272
Are those of the mate,	273
Are the wages of the master,	274
What is understood by <i>Barratry</i> ,	275
How defined in the United States courts,	276
Mere breach of contract on the part of the master not barratry,	277
The act of a freighter under a general charter-party cannot be treated as barratry,	278
Effect of barratry upon a policy of insurance,	279, 280
What is <i>deviation</i> as understood in a policy of insurance, . .	281
Legal effect of a deviation,	282
In what cases voluntary deviations will be justified,	283
What effect is given to the words <i>touch</i> or <i>touch and stay</i> , . .	284
The course that a master is bound to pursue when there are sev- eral ports of discharge mentioned in the policy,	285
Distinction between an <i>alteration</i> of a voyage and a <i>deviation</i> ,	286
Effect of taking on board more, or a different kind of cargo, than is authorized by the policy,	287
If the ship, after having deviated, returns to the proper course, and, while pursuing that course, loss happens, insurer not liable,	288
Will mere delay amount to deviation,	289
What amount of wages can be recovered by seamen where the voyage is broken up at an intermediate port,	290
In case of shipwreck, are seamen entitled to their wages, . .	291
Master of a vessel at sea may employ her in saving a wreck, . .	188

MEDICINE CHEST OF SHIPS.

Provisions for,	239
Penalty for omission of,	239

MEMORANDUM, THE.

Intention of,	82
Underwriters not liable for partial loss under five per cent. .	83
Meaning of the words, "warranted free from average unless general,"	84
Meaning of the words, "unless general,"	85
Meaning of the words, "or the ship be stranded,"	86
See <i>Average, particular.</i>	

MEMORANDUM ARTICLES.

Enumeration of,	77, 121
---------------------------	---------

MATERIAL MEN.

Who are,	271
--------------------	-----

O.

OLD MATERIALS.

	no.
Sale of,	65

OWNERS.—See *Master and Owners*.

Party indebted to, cannot take bottomry,	135
Liability of, for acts of the master,	213, 214
As to dismissal of master by,	237
Not liable where ship let to master on shares,	241
Of the liability of, for seamen's wages,	250, 252, 253

P.

PARTICULAR AVERAGE.—See *Average Particular*.PARTIAL LOSS.—See *Average Particular*.

PASSENGER.

When entitled to remuneration for salvage,	183, 184
Money found on the person of, free from salvage,	192
Act to regulate the carriage of passengers in merchant ships,	301

PERILS OF THE SEA.

What are,	242
Underwriters' liability for,	243
Loss by rats considered as,	244
But not by worms,	245

PILOT.

Necessity for taking a,	235
-----------------------------------	-----

PILOTAGE.

Into port of necessity,	7
-----------------------------------	---

PORT.

Of necessity, extra charges in,	4
Of necessity, unloading cargo in,	5
Of necessity, pilotage into,	7
Of necessity, disposal of cargo in,	230, 231

PROTEST.

	no.
By master,	10
Form of entry of, by master,	307
Form of extended protest of a ship,	308
By master, for demurrage payable under the stipulations of a charter-party,	309
By the master of a vessel against the consignees of goods for not taking and discharging them from the vessel in a reasonable time,	310
For not executing charter-party, according to memorandum of agreement,	326
For refusing to sign bill of lading for goods shipped at the freight contracted,	327
For breach of charter-party,	328

Q.**QUARANTINE.**

Delay at, not general average,	22
--	----

R.**REGISTRY OF SHIPS.**

Acts concerning,	292, et seq.
Form of a bill of sale of a registered ship,	312

RELEASE, GENERAL.

Form of,	314
--------------------	-----

RESPONDENTIA.

Defined,	123
Form of respondentia-bond,	306

REPAIRS.

Departure from the usual course to procure,	24
What are necessary repairs,	208
If bills drawn on owners for repairs are dishonored, action will lie against them,	209
Master may retain freight for money expended by him for,	210

RIGGING.

As to damage to, being general average,	17
---	----

S.

SAILS.

	no.
Damage to,	18

SALVAGE LOSS.

Defined, and how adjusted,	68, 197
--------------------------------------	---------

SALVAGE.

Defined,	169
Property must be actually saved to entitle to,	170
Lien for,	171
General principles respecting,	172
General rule of allowance in case of <i>derelict</i> ,	173
Derelict, when,	174, 175
Owners' right of property not lost by abandonment,	176
Nature of the possession acquired by salvors,	177
Owners' right of possession not lost where vessel only temporarily abandoned,	178
Neither is that of salvors,	179
Second salvors,	180
Actions for,	181, 194
Ingredients of a salvage service,	182
Whether it can be claimed by a passenger,	183, 184
When by crew,	185
When two vessels come together to render assistance, both are considered as salvors,	186
Contracts respecting, when binding,	187
Master of a vessel at sea, may employ her in saving a wreck,	188
Distribution of, amount to which salvor ship entitled,	189
Rule as to who pay salvage,	190
Freight,	191
Clothing of master and crew is free of salvage,	192
So also money found on person of passenger,	192
Also bills of exchange and other papers,	193
Salvors admitted as witnesses,	195
Expenses of, when included in determining whether the loss is total,	196
What is salvage loss, and how adjusted,	197
Abandonment to the underwriters,	198

SEAMEN.—See *Wages*.

As to the right of, to sue master and owners,	250
Act for the government and regulation of,	299, 300

SEA-WORTHINESS.

	no.
Defined,	263
Ship must be seaworthy at the time of departure,	264

SHIP.

Expense of floating, when general average,	6
Hire of extra hands to pump,	8
Bringing distressed ship into port,	9
Damage to,	15
Ships running foul.—See <i>Collision</i>	21
Value of, in contribution,	29
Estimated value of, when lost,	30
Estimated value of, when sold in a foreign port,	32
Equipment of, how estimated,	31
As to abandonment of.—See <i>Abandonment</i>	
Ship and freight, when bound for the acts of the master, . .	200
As to sale of, by the master,	234, 259
When officers and crew may refuse to go in the ship, . . .	238
What circumstances of distress will enable a master to convey an indefeasible title to his ship,	259
Must be seaworthy at the time of departure,	264
Must be fit for the trade in which she is to be employed, . .	265
Acts concerning.—See <i>List of Statutes</i>	
Form of agreement for freight of,	315
Form of agreement to build a,	318
Form of survey of ship and furniture,	323

SHIP'S ARTICLES.

Law in the United States respecting,	246, 247
--	----------

SHIPWRECK.

Voluntary stranding to avoid,	11
---	----

SHIP'S-HUSBAND.

His character and duty,	258
-----------------------------------	-----

STRANDING.

Defined,	117
See <i>Abandonment</i>	

T.

THIRD FOR NEW.—See *Average*.

INDEX.

xix

TOTAL LOSS.

	no.
Defined,	90
Constructive or technical total loss defined,	93, 94
Cases where damage may be total, though loss not exceeding fifty per cent.	107.
Of goods,	115
See <i>Abandonment</i> .	

U.

UNDERWRITER.

Liability of, in general average,	42, 43
Not liable for contribution made by mistake,	44
Liability of, in particular average,	54, 55
Liability of, in cases of collision.—See <i>Collision</i>	147
Liable for perils of the sea,	243
Liability of, for seamen's wages after abandonment,	254
Whether liable after a deviation,	289

W.

WAGES OF SEAMEN.

And provisions, in cases of general average,	12, 13, 14, 54
Preferred in admiralty to all other charges,	248
How lien for, may be enforced against the freight,	249
Master only liable for, time he is actually master,	251
Liability of owners for,	250, 252, 253
Liability of underwriters for, in case of abandonment,	254
Not insurable,	272, 273, 274
What amount of, can be recovered where the voyage is broken up at an intermediate port,	290
In case of shipwreck,	291
Form of a libel in a suit <i>in rem</i> . for recovery of,	321
Master's remedy for recovery of wages,	256, 257

WHARFINGER.

Has a lien on the vessel for wharfage,	220
--	-----

LIST OF STATUTES.

An Act concerning the Registering and Recording of Ships or Vessels.	
1792, December 31,	292
Acts in addition to the same. 1797, ch. 61,	293
“ “ “ 1803, ch. 71,	294
“ “ “ 1804, ch. 52,	295
An Act for Enrolling and Licensing Ships or Vessels to be employed in the Coasting Trade and Fisheries, and for regulating the same.	
1793, ch. 52,	296
An Act in addition to the same. 1797, ch. 61,	293
An Act supplementary to the same. 1819, ch. 172,	297
An Act concerning the Navigation of the United States. 1817, ch. 204,	298
An Act for the Government and Regulation of Seamen in the Merchants’ Service. 1790, ch. 29,	299
An Act to amend the same. 1805, ch. 88,	300
An Act to regulate the carriage of Passengers in Merchant Ships. 1847, ch. 16,	301
An Act extending the Jurisdiction of the District Courts to certain cases, upon the lakes and navigable waters connecting the same.	
1845, ch. 20,	302
An Act for the reduction of Costs and Expenses of Proceedings in Ad- miralty against Ships or Vessels,	303

LIST OF FORMS IN THE APPENDIX.

	no.
Average Agreement,	304
Bottomry-bond,	305
Respondentia-bond,	306
Entry or Note of a Protest of a Ship,	307
Extended Protest of a Ship,	308
Protest by the Master of a Vessel for Demurrage, payable under the Stipulations of a Charter-Party,	309
Protest by the Master of a Vessel against the Consignees of Goods for not taking and discharging them from the vessel in a reasonable time,	310
Charter-party,	311
Bill of Sale of a Registered Ship,	312
Bill of Sale of an Enrolled Ship,	313
General Release,	314
Agreement for the Freight of a Ship,	315
Bill of Lading,	316
European Coins reduced to dollars and cents,	317
Agreement to build a Ship,	318
Policy of Insurance,	319
Libel in a suit <i>in rem.</i> for Labor, Materials, or Supplies furnished in repairing, fitting out, or furnishing a Foreign Maritime Vessel,	320
Libel in a suit <i>in rem.</i> , by a Mariner, for Wages,	321
An Agreement as to owning and sailing a Vessel in Copartnership,	322
Survey of a Ship and Furniture,	323
Notary's Certificate to Survey,	324
Notice of Abandonment,	325
Protest for not executing Charter-party, according to Memorandum of Agreement,	326
Protest for refusing to sign Bill of Lading for Goods shipped, at the Freight contracted,	327
Protest for breach of Charter-party,	328
Form of Draft to be given by Master for Advances, etc.	329

GENERAL AVERAGE.

(1). *What is General Average?*

General Average is a contribution by all parties concerned, towards a loss sustained by some of the parties in interest for the common benefit. Park on Ins., ch. 6, p. 134.

(2). *What is Particular Average?*

Simple or Particular Average means damage incurred by or for one part of the concern, which must be borne by that alone, as the loss of an anchor, or the starting of a plank. Abbott on Shipp., 8 ed., 474.

(3). *What is meant by Jettison?*

Whatever the master of a ship does in distress for the preservation of the whole, as in cutting away masts or cables, or throwing goods overboard to lighten his vessel, which is what is

meant by Jettison or Jetson is brought into general average. Emerigon, c. 12, s. 39, 40. Jackson *v.* Charnock, 8 T., R. 513. Price *v.* Noble, 4 Taunt, 132.

(4). *Are all extra charges incurred for the general good, on putting into a foreign port in distress, general average?*

These, together with the warehouse rent and reloading charges of the cargo, are held to be made good by general contribution.

(5). *Are the Expenses of unloading the cargo, either for the purpose of repairing the ship, or for floating her when she accidentally gets aground, general average?*

They are, because the ship, cargo, and freight are equally interested—the ship that she may be repaired, and the cargo (in which is the freight) that it may be preserved. Stevens & Benecke on Av., 75.

(6). *Are the Expenses of getting the ship off the ground, general average?*

If, to prevent shipwreck or capture, it be necessary to run the ship into a harbor *not the place* of her destination, and which cannot be entered without discharging part of her cargo, this, as well as the expense of getting her afloat (if on shore), are general average. Phillips on Ins., 1312.

(7). *Is Pilotage, on putting into a port in distress, general average?*

It is. Stevens on Av., 75.

(8). *Is the Hire of extra hands to pump the ship, after having sprung a leak, general average?*

It is. 1 East's Term Rep., 220.

(9). *Is the Sum awarded or agreed to be paid to ships, boats, pilots, etc., for bringing a ship, when at sea in distress, into a port; or, for unloading the ship and getting her off the ground when forced on shore, general average?*

It is, as also the charge of taking off anchors, cables, etc., and rendering assistance generally. Stevens & Benecke on Av., 77. Stat. 12 Anne., c. 18. 3 Geo. I., c. 13. 26 Geo. II., c. 19.

(10). *Is there any, and what form, to be gone through by the master, on meeting with a disaster?*

He ought to consult with the most experienced of the crew, and the supercargo (if there be one on board), and to make as minute an entry in the journal, or log-book, as the nature of the case may require; and, immediately on his arrival in port, to note, and as soon after as possible, extend his protest; for, it is not only proper that he should enter his protest on arrival, but he should extend his protest also whilst the occurrences of

the voyage are fresh in his memory. Stev. & Ben., by Phil., 81.

(11). *Are the repairs of the damages sustained by a ship, purposely run ashore to prevent her foundering at sea or driving on the rocks, and which is afterwards got off with damage and arrives at her port of destination, general average?*

Where the situation of the ship is such, that the power of voluntary action remains, so that, notwithstanding the fury of the elements, the point of stranding may be selected, and benefit results from the change in the course of the ship; or if the place where she actually takes ground is of such a nature as to involve less danger to the cargo, than that to which she was drifting before her course was altered, the circumstances of such a case, it seems, constitute a claim for contribution. See 2 American Leading Cases, 563, 564; Columbian Ins. Co. v. Ashby, 13 Peters' R., 331; Barnard v. Adams, 10 Howard, 270.

(12). *Are the wages and provisions of the ship's company general average?*

They are from the time when, in distress, the ship alters her course to seek a place of safety to refit, and until she is refitted and pursues her voyage. 1 Phil. on Ins., 1328; Waldron v. Le Roy, 2 Caine's Rep., 263; Abbott on Shipp., 497; 3 Kent, 5 ed., 235.

(13). *When the crew are hired by the month, does this hold good?*

It is generally allowed for this reason, that the master, not receiving any freight while the deten-

tion lasts, is not obliged to furnish for nothing his sailors to take care of the merchant's goods. However, it seldom happens that the crew are hired by the month: they are paid at the rate of so much per month, but they are hired for or by the voyage. Stevens & Ben., 88.

(14). *Cases sometimes occur, where a master of a ship, being under the impression that seamen's wages would not be allowed on a vessel putting into a port in distress, has, on arrival, discharged his crew, and then hired them again and charged for their services as laborers in discharging and reloading the ship, rigging her, etc. Is this allowed in general average?*

It is not the general and most approved mode of proceeding, as it is argued by some that the owner is bound, at his own peril, and at his own expense, to keep a competent crew on board from the commencement to the termination of the voyage (Stevens on Average, 89). However, an adjuster would not, probably, hesitate to make up an adjustment in this manner, on the ground that, as the underwriters undertake to indemnify the owners against certain perils and damages, it is immaterial to them whether such damages are repaired by men hired for the special purpose, or by some of the crew, provided the expense is the same. Stevens on Av., 89, n.

(15). *How does general average apply generally where damage is done to ships?*

All damage purposely done to the vessel, to preserve the whole from impending danger, is general average; such as the cutting away of masts, rigging, etc., when the ship is in distress; the cutting or slipping from anchors to avoid running ashore or being run foul of, or for the purpose of getting clear of another vessel, etc. 1 Emergon, 515. Abbott, 346. 1 Rob. Ad. R., 289. Beawes, 148.

(16). *If sails, ropes, and other materials are cut up and used at sea for the purpose of stopping a leak occasioned by storm, are they proper subjects of general average?*

They are; for they are required for the general safety: so, also, where like materials are used to raise a jury-mast, or for extraordinary purposes of a similar nature which the general safety may require, are also proper subjects of general average. 1 Emergon, 629, c. 12.

(17). *Where a mast has been carried away in a storm and remains hanging over the side, if the rigging is cut away to get rid of the broken mast, will it be a cause for general average?*

This will depend on circumstances. If the ship was far from port, and could not be navigated to a

place of safety without cutting away the rigging, it is held to be no cause of general average; but if the circumstances occurred in sight of a port which the vessel might reach without the rigging being cut away, and this measure be resorted to merely to facilitate the manœuvring of the vessel and to give her and her cargo a better chance to escape the danger, in that case it would be a sacrifice, and the rigging so cut away ought to be allowed for at the value at which it would have had if not cut away. *Stev. & Ben. on Av., by Phil., 111.*

(18). *Is the loss of sails, occasioned by carrying an extraordinary press to avoid a lee shore, or to escape from an enemy or pirate, considered general average?*

It is not; but is a particular average, and to be borne by the owner. This is the law of the United States and England. By the French and Prussian laws it would be held to be general average. *Covington v. Roberts, 2 New Rep., 378.*

(19). *When boats are obliged to be cut away from the ring-bolts to which they are fastened upon deck, and thrown overboard, are they allowed for in general average?*

They are. But if by negligence they were left outside of the vessel, or hung over the ship's stern, it is proper that no compensation be made. How-

ever, this will depend upon usage. From some ports the usage is to carry the boats on the davits. The practice in Philadelphia is said to be to pay for a boat so carried. Some underwriters in Boston make no objection to the loss in such cases; others think that the boat so carried is not covered by the policy. *Stev. & Ben. on Av., by Phil., 113.*

(20). *Is the freight of a vessel totally lost (but cargo saved), by being run ashore for her preservation and that of her crew and cargo, allowed to the owner of the vessel as the subject of general average?*

It is. *Phillips on Ins., 1302. 3 Kent's Com., 239.*

(21). *What is the general rule of contribution for a loss by collision or running foul?*

* The damage occasioned to a ship and her cargo by being run foul of accidentally, and without fault on either side, ought to be particular average, and is so by the civil law, as well as by the law of England, which considers such injury as a peril of the sea; and the law of the United States is the same on the subject of collision. But when, in consequence of being run foul of, cables or any tackle are obliged to be cut away, or other expenses of the nature of a general average incurred, these are certainly to be considered as general average. *Peters v. Warren Ins. Co., 1 Story's Rep., 468.*

(22). *Are quarantine charges considered as general average?*

The regular quarantine charges, invariably attached to certain voyages, cannot be considered as general average, since the captain, in fixing his freight, must calculate upon them. 1 Emergon, p. 633. 1 Magens, 67, s. 57.

(23). *How is damage occasioned by fire considered?*

Damage by fire, whether occasioned by lightning, by the intrinsic quality of the goods, or by other accidental causes, is, doubtless, particular average. But if sacrifices be made in order to extinguish the fire—if masts or cables, for instance, be cut away, or the vessel be run ashore—the damage would be general average.

The effect of water, thrown upon the burning goods to extinguish the fire, is particular average: it is not an injury but a real advantage done to them. But the damage done by water to other goods is of the nature of general average. Stev. & Ben. on Av., by Phil., 165.

(24). *What is the rule with reference to general average, as to money which the captain is obliged to raise abroad, in order to enable him to prosecute the voyage?*

It appears to be a rule, established in all countries without exception, that if a vessel, for the

necessities of which, upon the passage, bills have been drawn, arrive safely at the place of her destination, the charges incurred in drawing—such as commission, loss in the exchange, interest of money advanced, etc.—must be added to the other expenses, and repaired by the parties interested, according to their respective shares, so that the charges of raising money for defraying expenses of the nature of a general average, belong to general average; those incurred for paying a particular average on the vessel, constitute a particular average, etc. Ord. de Bilbao, chap. 24, art. 38, y. 39. Dan. Law, tit. 6, art. 5. Stev. & Ben., 172.

ADJUSTMENT
OF
GENERAL AVERAGE.

(25). *In what does the adjustment of general average consist?*

In ascertaining the amount of the claim, and in determining the respective shares of contribution.

(26). *What is the rule as to the estimate of property sacrificed?*

That the owner of property sacrificed must be placed in the same condition in which he would have been if not his property but that of another party had been sacrificed. Stev. & Ben. on Av., by Phil., 227.

(27). *What must contribute to general average?*

All the merchandise, of whatever kind or weight, or to whomsoever belonging, contributes. The

contribution is made not on account of incumbrance to the ship, but of safety obtained ; and, therefore, bullion and jewels, put on board as merchandise, contribute according to their full value. 3 Kent, 240. Abbott on Shipp., 503.

(28). *How are the goods valued in adjusting a general average?*

When the average is adjusted at the port of discharge, the universal practice now is, to take the actual value of the cargo at the market price, stripped of all the charges attached to it as freight, duty, and landing charges. And if a jettison has taken place, then the estimate proceeds of the goods jettisoned, taken in like manner, should be added to the net value of the cargo saved. The goods must contribute, according to their value, in the state in which they arrive at that place. The same rule is to be followed under similar circumstances for disbursements, if the goods arrive in a sound state, or if they were diminished in value by internal decay, or external damage, previous to the period at which the disbursements were made. But if damaged goods are sold at the intermediate place to prevent their further destruction, the net amount for which they were sold at that place will be the sum for which they must contribute to general average. 1 Emergon, 12. Leg. Wisb., art. 39. Malynes, c. 25. 2 Val. Com., 297. Magens, p. 69.

(29). *What is the rule for estimating the value of the ship for the purpose of general average?*

The true value of the ship, for contribution, is the amount that her hull, masts, yards, sails, rigging, and stores would produce after the sacrifice is made, with the addition of the amount made good by the general average contribution.

The only value to be attended to in the adjustment of a general average is, what the vessel is worth to her owner; and this value is neither increased nor diminished by an accidentally great or small demand for shipping, or by the circumstance of a vessel being of less value in a foreign country than in her own, if she is not meant to be sold at all. The sum, therefore, for which the vessel has to contribute towards a loss by articles sacrificed and not replaced during the voyage, adjusted at the port of destination, is what she is worth to her owners in the state in which she arrives.

But in all those cases in which the cargo is obliged to contribute for its value, at the time of the accident, without reference to a subsequent diminution, the vessel ought to contribute also for that value, this being the only way of placing parties upon an equal footing. The vessel, moreover, must contribute also for that amount allowed to her by the general average contribution—as for cables cut or slipped, etc.—for the same reason for which the owner of goods cast overboard contributes

for their amount. It is a matter of great difficulty, as may easily be perceived, to determine the sum for which the vessel ought to contribute, and very frequently an approximation to truth is all that can be expected.

It is frequently the best guide for determining the contributory interest, to make the valuation in the policy of insurance the basis of the calculation; and then it is to be considered whether the ship was insured at her full valuation at the beginning of the voyage, including the outfit, advanced wages, and premium, and the net freight, or without profit, and after deducting the probable wear and tear, and the gross freight.

In the first case, the outfit—such as provisions, etc.—wear and tear, and premium, are to be deducted, but not in the latter. In New York and Philadelphia the ship contributes on four-fifths of her value at the commencement of the risk. *Leavenworth v. Delafield*, Caine's Rep., 573. Phill. on Ins., 4th ed., 1379.

(30). *How is the value of a vessel lost estimated?*

According to her value at the port of departure, making a reasonable allowance for wear or tear on the voyage up to the time of the disaster. 3 Mason, 439. 3 Kent's Com., p. 242. *Strong v. Fire Ins. Co.*, 11 John's Rep., 323.

(31). *How are losses of the equipment of the ship estimated?*

As to losses of the equipment of the ship, such as masts, cables, and sails, it is usual to deduct one-third from the price of the new articles ; for, being new, they will be of greater value than the articles lost. Abbott on Shipp., 8th ed., 504. 3 Kent, 5th ed., 243. Strong v. Fire Ins. Co., 11 John's, 323.

(32). *If the ship, in a case of injury by the perils of the sea, is obliged to be sold in a foreign port, how is her value to be calculated in contribution?*

At what she actually and *bonâ fide* sold for.

(33). *At what place ought the average to be adjusted?*

At the place of the ship's destination, or delivery of her cargo. On this point all nations agree. Abbott on Shipp., 8 ed., 503. An adjustment at an intermediate port, without the consent of the parties interested, would not be binding upon any one. Benecke, 269.

(34). *Is the master compelled to part with possession of goods before the sum, contributable in respect of them, is either paid or secured to his satisfaction?*

He is not ; but has a lien on the cargo to enforce the payment of the contribution. 11 John's. 323.

U. States v. Wilder, 3 Sumner, 308. Simonds v. White, 2 Barn. and Cres. 805.

(35). *If he thinks proper to do so, what security ought he to take?*

In the case of a general ship, where there are many consignees, it is usual for the master, before he delivers the goods, to take a bond from the different merchants for payment of their portions of the average, when the same shall be adjusted.

(36). *But if the master were to part with the goods (without such bond being taken), and he afterwards pays the portion of the contribution chargeable to them, what would be the consequence?*

An implied assumpsit by the shippers to repay the same would, undoubtedly, be raised in favor of the master. Eckford v. Wood, 5 Alabama, 136.

(37). *What is the rule as to the contribution of freight?*

The freight, pending at the time of the jettison, or other sacrifice, contributes to the average. Phill. on Ins., 1287, 1301. The owners contribute, according to the value of the ship, at the end of the voyage, and the clear amount of the freight, or earnings of the voyage, after deducting the wages of the crew and other expenses of the voyage. Abbott on Shipp., 504.

(38). *What is the practice, in the United States, for ascertaining the contributory amount of freight?*

By deducting one-third from the gross amount.
3 Mason's Rep., 439.

(39). *What is the rule for the contribution of freight, where the ship is chartered for the voyage out and home, under the stipulation that no freight is to be paid for the carriage of the outward cargo, unless the ship bring back her homeward cargo in safety?*

In the case of *Williams v. The London Ins. Co.*, 1 Maule & Selw., 318, the Court of King's Bench adjudged, that the whole freight was to contribute, the whole of it having been saved by the measures taken for the general benefit. *Abbott on Shipp.*, 504.

(40). *What is the usual mode of contribution, and what are the necessary steps to be taken in the matter?*

Supposing a general average to be settled upon the ship's arrival at the port of destination, it is necessary, in the first place, to take an account of the several losses, which are to be made good by contribution; in the second place, to take another account of the value of all the articles that are to contribute; in which must be included the value of the goods, etc. thrown overboard; for, otherwise, the proprietors of those goods will receive their full value, and pay nothing towards the loss. But this

will be more readily understood by an example in figures. The following is, therefore, taken from Abbott on Shipping, 8 Ed., 505:

"It became necessary in the Downs to cut the cable of a ship destined for Hull; the ship afterwards struck upon the Goodwin, which compelled the master to cut away his mast, and cast overboard part of the cargo, in which operation another part was injured; the ship being cleared from the sands, was forced to take refuge in Ramsgate harbor, to avoid the further effects of the storm.

AMOUNT OF LOSSES.		VALUE OF ARTICLES TO CONTRIBUTE.	
Goods of A. cast overboard, . .	£500	Goods of A. cast overboard, . .	£500
Damage of the goods of B. by the jettison,	200	Sound value of the Goods of B., deducting freight and charges, . .	1,000
Freight of the goods cast overboard,	100	Goods of C.	500
Price of a new cable, anchor, and mast,	£300	" D.	2,000
Deduct one-third,	100	" E.	5,000
Expense of bringing the ship off the sands,	50	Value of the Ship,	2,000
Pilotage and port-duties going into the harbor and out, and commission to the agent who made the disbursement,	100	Clear freight, deducting wages, victuals, etc.,	800
Expenses there,	25	Total of contributory value, £11,800	
Adjusting this average,	4		
Postage,	1		
Total of losses,	£1,180		
Then £11,000 : £1,180 :: 100 : 10.			

"That is, each person will lose 10 per cent. upon the value of his interest in the cargo, ship, or freight.

Therefore A. loses	£50
B. "	100
C. "	50
D. "	200
E. "	500
The owners lose	280
Total of £1,180, which is the exact amount of the losses.	

“Upon this calculation, the owners are to lose £380; but they are to receive from the contribution £280 to make good their disbursements, and £100 more for the freight of the goods thrown overboard, or £480, minus £280.

They, therefore, are actually to receive	£200
A. is to contribute £50, but has lost £500; therefore, A. is to receive	450
B. is to contribute £100, but has lost £200; therefore, B. is to receive	100

Total to be actually received,	£750
--------------------------------	------

On the other hand, C., D., and E. have lost nothing, and are to pay

as before, viz: C.	£50
D.	200
E.	500

Total to be actually paid,	£750
----------------------------	------

Which is exactly equal to the total to be actually received, and must be paid by, and to, each person in ratable proportion, to be ascertained by another calculation, with which it is unnecessary to treat here.

“In the above estimate of losses, the freight of the goods thrown overboard is included, which appears to be proper, as the freight of these goods is to be paid, and their supposed value is taken clear of freight as well as other charges.” Abbott on Shipp., Story & Perkin’s Notes, 8th ed., 505.

For another, and, perhaps, more simple example, we will presume: The ship *Ocean*, from *New Orleans*, for *New York*, in the course of her voyage, to have suffered the following damages; required, the general and particular average loss?

Cost of replacing masts, cables, etc., cut away,	\$1,500	
Deduct one-third for new,	500	
		\$1,000
Anchor lost, which cost		200
10 puncheons of rum thrown overboard,		1,000
Sundry charges for pilotage, etc.,		200
Amount of general average loss,		\$2,400

Of 80 hhds. of sugar shipped, a part was so much damaged, that the deficiency of 20, on a comparison with 60 that arrived safe, was 10 hhds., which, at \$120 each, amount to \$1,200.

VALUE OF SHIP, CARGO, AND FREIGHT.

Ship <i>Ocean</i> , valued at	\$22,000
Cargo, net proceeds as per acct. sales,	34,000
Gross freight,	\$10,000
Portage bill deducted,	200
	9,800
Total amount,	\$65,800

STATEMENT OF GENERAL AVERAGE.

As \$65,800 : \$2,400 :: \$100 : \$3-65.

STATEMENT FOR PARTICULAR AVERAGE.

As the value of 80 hhds. of sugar, which is

\$9,600 : \$1,200 :: \$100 : \$12-50.

So, the underwriters will have to pay \$3-65 per cent, nearly, for general average on \$65,800, and \$12-50 per cent. for particular average on \$9,600.

From the foregoing it will be seen that the calculation in either kind is made according to the *Rules of Fellowship*.

(41). *What is the rule where a general average is settled in a foreign port?*

That when a general average is fairly settled in a foreign port, according to the law of that port, it is binding, though settled differently from what it would have been in the home port. 11 John's Rep., 323. *Lewis v. Williams*, 1 Hall's N. Y. Rep., 430. 2 Barn. & Cres., 805.

(42). *What is the understood liability of underwriters, as to general average?*

The laws and policies of insurance of all nations oblige the underwriters to indemnify the assured for average contributions, with this difference, however, that, in some countries, the underwriters are not liable unless the general average exceeds a fixed per centage ; whereas, in this country, they compensate for every loss of that kind, however small. Stev. & Ben., 270.

(43). *Are the underwriters liable only on value insured ?*

When the contribution is fixed according to the value at the place of discharge, after deduction of freight and landing charges, and this value is less than the value in the policy, the assured can demand of his underwriters not more than what he really paid ; if it be more, in consequence of a rise in the market, the surplus is profit, for which the underwriters cannot be obliged to pay general average, having received no premium for expected profit. Stev. & Benecke on Average, 271.

(44). *Are underwriters liable for contribution made by mistake ?*

They are not. When the contribution is made according to the prime cost of the goods, the insurance premium and imaginary profit, if any such was comprised in the valuation, must not be forgotten to be deducted.

If the insured, by his own mistake, contributes for a greater sum than he ought, this loss, of course, cannot be at the charge of the underwriter. Stev. & Benecke on Av., by Phill., 271.

PARTICULAR AVERAGE

AND

PARTIAL LOSS.

(45). *By whom is a particular average loss to be borne?*

By the owner of the thing which has sustained the damage or occasioned the expense. Code de Commerce, art. 404.

(46). *What is the distinction between a particular average and a partial loss?*

The term "particular average" is used to signify the mode of adjusting a loss on goods, arising from the article being deteriorated in value, in consequence of its being sea damaged; and the term "partial loss" to signify a total loss of part of the thing insured. Stev. & Ben. on Average, 281.

(47). *What is the most approved mode of adjusting a particular average?*

It is by comparing the market price of the sound merchandise with the market price of the damaged ; and thus ascertaining the relative depreciation in value sustained by the merchant from the sea damage. The amount of indemnity is ascertained by taking into consideration the actual market value of the goods at the port of departure ; or, when that cannot be ascertained, the invoice price at the loading port, and taking with that the premium of insurance and commission, as the basis of the calculation. *Johnson v. Shedden*, 2 East's Rep., 581. 3 Boss & Pull Rep., 308. 3 Kent, 337.

(48). *Is the premium of insurance considered as part of the value of the goods ?*

It is.

(49). *What is the rule for adjusting partial loss, technically so called ?*

A partial loss, properly so called, is a total loss of a part of the interest *ex gr.* In an insurance on twenty hogsheads of sugar, if one is washed out, that is called a partial loss ; therefore, the amount lost must be paid for at the prime cost, or the value in the policy, because the goods never having arrived, no reference can be had to the market price at the port of discharge ; that being resorted to merely to ascertain the *quantum* of damage.

Whenever there is a total loss of any part of the

interest, it must be settled in the same manner as a total loss of the *whole*. Stev. & Ben. on Av., 335.

(50). *When a partial loss and a particular average both occur on the same interest, how are they adjusted?*

It is held to be the most correct practice to adjust them separately. Stev. & Ben., 335.

(51). *What is the rule for adjusting partial loss, or particular average on ships?*

The rule is, to apply the old materials towards the payment of the new, by deducting the value of them from the gross amount of the expenses for repairs, and to allow the deduction of one-third new for old upon the balance. Barnes *v.* Nat. Ins. Co., 1 Cowen, 265. Brooke *v.* Oriental Ins. Co., 7 Pick., 259.

(52). *What are some of the principal losses that properly belong to particular average or partial loss?*

Sails, split or blown away by the extraordinary force of the winds, are, usually, particular average; though claims for this loss are allowed not without hesitation and scrutiny as to the strength of the sail and the degree of violence, since it is the ordinary ultimate result of exposure, and wear and tear.

Also *Cables parted* in like manner, or washed

from the deck, if properly kept there ; but not if improperly kept there.

Masts sprung ;

Spars carried away ;

Planks started ;

Damage by the vessel being so strained that its shape is distorted, and its value materially diminished, as in the case of its being hogged, though indefinite strain not subject to be estimated, is not included.

Loss of Boats.—The question has been made in Massachusetts, whether the description “the ship” covers the boat slung at the stern davits. The witnesses differed as to the usage, and as to its being safe and proper to carry the boat at the stern ; but, as it did not appear from the testimony that it was unusual, or an extraordinary enhancement of the risk, it was ruled that the boat so carried was covered by the policy. (*Hall v. Ocean Ins. Co.*, 2 Pick., 472). That is to say, if the carrying of the boat so slung is usual under like circumstances, or, if it does not enhance the risk of the boat, and that unnecessarily, it is also covered under a policy on the “ship,” as one of its appurtenances.

Tearing of the sheathing ;

Breaking of the upper works ;

Or timbers ;

Or any part of the ship ;

Damage by accidental stranding ;

Or by lightning ;

Or by fire ;

Or by collision ;

And all other loss and expense upon the ship, directly occasioned by the perils insured against, not purposely incurred, and so belonging to general average, and not amounting to a total loss. Phillips on Ins., 4th ed., 1424.

(53). *Is the repairing or replacing, of parts of the ship injured or destroyed by the perils insured against, particular average ?*

It is—though such parts may have previously become deteriorated by age and use—provided the ship was seaworthy at the commencement of the risk. The burden is on the assured to prove the loss, and the seaworthiness of the ship being one condition of his recovering, in case of any doubt arising, from the circumstances, respecting its soundness and sufficiency, he must, as a preliminary step, make out his compliance with that condition. This being done, his claim is not subject to be defeated, because time and use have concurred with the action of the perils insured against in producing the loss. *Depau v. Ocean Ins. Co.*, 5 Cowen, 63. Caine's Rep., 85.

(54). *Is the greater or less expense of the repairs at the place where it is necessary to make them at the risk of the underwriter ?*

It is at the risk, or for the advantage or disad-

vantage, of the underwriter. Phill. on Ins., 1426.
Waller v. La. Ins. Co., 9 Martin, N. S., 276.

(55). *Is the extraordinary expense of raising funds, for particular average expenses, at the risk of the underwriter?*

It is, in proportion of his liability for the loss.
Phill. on Ins., 1427.

(56). *How far is the underwriter responsible for the repair or restoration of the damaged or destroyed part of the ship, or article belonging to it?*

He is responsible that it be done with materials, workmanship, style, and finish corresponding to its original character.

(57). *Are the wages and provisions of the crew, during detention for repairs, allowed in particular average?*

It should seem that this ought to depend upon the men being employed upon the repairs, though there are decisions against the allowance of these charges, notwithstanding their being so employed. Phillips on Ins., 1429.

It has been distinctly held in Massachusetts that the labor of the crew, in repairing damage occasioned by the perils insured against, is chargeable to the underwriters. Hall v. Ocean Ins. Co., 21 Pick. R., 472.

(58). *Where timbers or other materials are replaced by new, must the assured bear any part of the expense of labor and materials for the repairs?*

He must bear one-third part of the expense of the labor and materials for the repairs, and this deduction is said to be on account of "new for old," the insurers being liable only for two-thirds of the cost of the labor and materials. *Fisk v. Commercial Ins. Co.*, 18 La. R., 77.

(59). *If the ship be perfectly new, say on her first voyage, or the materials sacrificed be perfectly new, will there be a deduction of one-third from the new articles and labor?*

In the United States there is no exception to the rule for the deduction of a third on a new ship, the deduction being made on such ships no less than others. *Nickels v. Maine Fire and Mar. Ins. Co.*, 11 Mass. R., 253. *Stevens & Ben. on Av.*, 375.

(60). *Is any deduction made on copper sheathing?*

One of our insurance associations, which is conducted by very experienced and intelligent ship-owners, has the following rules in regard to copper sheathing :

During the *first* year, no deduction is made ; during the *second* year, one-fifth is deducted, and so on, deducting one-fifth more for every succeed-

ing year till the completion of the five years, after which period the association does not make good any part of the copper. Thus allowing sixty months' service. Benecke & Stev. on Av., by Phill., 374, n.

(61). *Is any deduction made on chain cables?*

The deduction of a third is made on chain cables, no less than other iron-work, though such cables were at first exempted by very many insurance companies for the purpose of encouraging their introduction. Phill. on Ins., 1431.

(62). *Is any deduction made in replacing new anchors?*

No.

(63). *As the deduction is made only from the repairs, what expenses belong to the repairs?*

It is the custom in Boston, in adjusting a particular average, to deduct a third, not merely from the expense of materials and labor, but also from the incidental charges, such as dockage, and the charge for the use of a marine railway, and that of moving the vessel from the wharf where she is moored to the place of repair. And this practice seems to be well founded in respect of such charges as are directly incidental to repairs. See statement of Mr. Tyler, a witness in *Orrok v. Commonwealth Ins. Co.*, 21 Pick. R., 456.

(64). *Are the commissions of an agent for advances, and transacting the business of the repairs, and refitting of the ship, subject to the deduction?*

This seems to be strictly incidental to the loss, and subject to the deduction. *Phill. on Ins.*, 1433. *Orrok v. Commonwealth Ins. Co.*, 21 *Pick.*, 456.

(65). *Are the proceeds of the sale of the old materials to be deducted before or after making the deduction of a third for new?*

The true rule seems to be, to apply the old materials towards the payment for the new, and to allow the deduction of one-third from the balance. *Byrnes v. National Ins. Co.*, 1 *Cowen*, 265.

(66). *Is the insurer to pay the same proportion of the whole loss, that the sum insured is of the whole amount of the insurable interest?*

If the underwriter has agreed to insure one-half or one-quarter of his interest, he must pay the same proportion of the expense of repairs. *Stev. & Ben. on Av.*, 388. *Phillips on Ins.*, 1435.

(67). *If \$1,000 is insured in an open policy on a ship worth \$2,000 at the commencement of the risk, which sustains a partial loss of \$500 at a subsequent period, when her value is diminished by wear and tear and decay, and the consumption of provisions,*

to \$1,500, is the underwriter to pay 50 per cent. or 66⅔ per cent. of the loss?

According to the practice, he pays fifty per cent. ; that is, the value of the ship at the commencement of the risk is the basis on which the partial loss is estimated.

The result is the same in a valued policy, in which the ship or other subject is put at an undervaluation. Accordingly, an undervaluation, or an insurance at an amount less than the value of the ship, at the commencement of the risk, operates unfavorably to the underwriters in respect to particular average for repairs. Benecke & Stevens, by Phill., 388. Phillips on Ins., 1435.

(68). What is the general rule for the adjustment of salvage loss?

The rule generally acted on is, that the underwriter pays a total loss and takes the proceeds of the goods.

A salvage loss (from which this mode of adjustment is derived) is that kind of loss which it is presumed would, but for certain services rendered, and exertions made, have become a total loss. The charges incurred are called "salvage charges," the property saved is "the salvage," and the difference between the amount of the salvage (after deducting the charges) and the original value of the property is called "the salvage loss." Benecke

PARTICULAR AVERAGE AND PARTIAL LOSS. 33

& Stev., 283. 4 Taunt. Rep., 803. For cases of salvage see Dig. 3, 5. The Calypso, 2 Hagg. Adm. Rep., 217. 1 Rob. Am. Rep., 278. The Aquila, 1 Rob. Ad., 32.

FREIGHT.

(69). *How is a particular average or partial loss on freight occasioned?*

By the loss of the ship after a part of the voyage is performed, which makes it necessary to hire another ship to carry on the cargo to the port of destination, in order to earn the freight. *Saltus v. Ocean Ins. Co.*, 12 John's, 107. *Schieffelin v. New York Ins. Co.*, 9 John's, 21.

(70). *Is a loss of a part of the cargo, whereby the ship is prevented from earning a part of its freight, a particular average on freight?*

It is; and it does not appear to make any difference, in this respect, that the loss is on an article of a perishable nature, and of more than ordinary liability to damage—as in the case of tobacco being damaged and destroyed by sea water. *Coolidge v. Gloucester Mar. Ins. Co.*, 15 Mass. Rep., 341.

(71). *Where, on account of the perils insured against, only freight pro rata is earned, is this a case of partial loss upon this interest?*

It is. Abbott on Shipp., 432, 433, 434.

(72). *How is the loss computed in the case of goods being transported for a part of the voyage only, by the ship of which the freight is insured, and a freight pro rata itineris peracti is earned?*

The loss is computed by deducting from the gross freight the actual or estimated expense of forwarding the goods to the port of destination. Phillips on Ins., 1441. Abbott on Shipp., 433. Bork v. Norton, 2 M'Lean's c. c. (U. S.) R., 423. Coffin v. Storer, 5 Mass. R., 252.

(73). *If the captain or the supercargo sells goods at some intermediate port on account of sea damage, deterioration occasioned by the qualities of the articles, or other causes which might probably diminish or destroy their value in the subsequent part of the voyage, what freight will be due on such articles?*

The entire freight to the port of destination will be due on such articles, if the master is ready to carry them on immediately, or within a reasonable time. Jordan v. Warren Ins. Co., 1 Story's Rep., 342.

(74). *In a case of unavoidable delay for repairing*

damage or otherwise, and the master does not retain the cargo until he is prepared to resume the voyage, but delivers it to the shipper, is it a ground for claiming an average loss on freight?

It is not; for the master is allowed to retain the cargo a reasonable time for the purpose of resuming the voyage; and if he does not do so, this is not a loss by the perils which occasions the delay, and accordingly is not a ground for claiming an average loss on freight. *Griswold v. New York Ins. Co.*, 1 John's, 205. *Saltus v. Ocean Ins. Co.*, 14 John's, 138. *Clark v. Mass. Fire and Mar. Ins. Co.*, 2 Pick., 104. *M'Gaw v. Ocean Ins. Co.*, 23 Pick., 405. *Jordan v. Warren Ins. Co.*, 1 Story's R., 342.

(75). *Is a mere delay of the voyage—for instance, a two months' capture—a particular average on freight for wages and provisions?*

It is not. *Ins. Co. of North America v. Jones*, 2 Binn., 547.

THE MEMORANDUM.

(76). *What is understood by the memorandum?*

Exceptions in the policy of certain articles enumerated, on which the underwriters are not liable for particular average.

These exceptions formerly were introduced, and still are, in some forms of policy, under a "memorandum" or "N. B.;" and hence the list of them is sometimes signified by the term "memorandum," and the articles are denominated "memorandum articles." Stev. & Ben. on Av., by Phill., 418. Phillips on Ins., 1756.*

(77). *What are the average exceptions in Boston?*

In Boston the insurers are not liable for a partial

* The reason of these exceptions is the great liability of such articles to damage from slight causes, insomuch that it is not easy to discriminate damage by ordinary causes from that resulting from the extraordinary operation of the perils insured against, which latter cause of loss, as has been previously seen, is the only one against which the assured is entitled to indemnity. Accordingly, these specific exceptions are introduced as one test of the operation of the peril being extraordinary

loss, under seven per cent., on sugar, flaxseed, bread, tobacco, and rice.

(78). *What in New York?*

In New York they are not liable for partial loss, under twenty per cent., upon hemp ; or under ten per cent. upon coffee or pepper in bags or in bulk ; or under seven per cent. upon sugar, flaxseed, or bread.

(79). *What in Baltimore?*

In Baltimore they are exempted from partial losses, under ten per cent., upon coffee in bags, and, in some policies, a similar exception is extended to cocoa in bags.

(80). *What in Charleston?*

In the policy of one of the insurance companies of Charleston, particular average, under seven per cent., is excepted on sugar, coffee, cocoa, hemp, flax, flaxseed, bread, skins, hides, and tobacco ; and under ten per cent. on the following articles in bags, namely : coffee, cocoa, pimento, and all other East and West India articles.

(81). *What in Philadelphia?*

The Philadelphia policies do not contain any exception of particular averages under a certain

rate, besides the general exception of those under five per cent.

(82). *What is the intention of the memorandum?*

It appears to have been to prevent persons from being insured on certain articles, particularly liable to waste, decay, leakage, or damage on a sea voyage, or which were of great value and small bulk, under the general expression of "goods," whereby the insurer would run a greater risk than he had calculated on.

(83). *Are the underwriters liable for partial losses, of however small amount?*

The underwriters of New York expressly declare in a memorandum at the foot of the policy, that they will not answer for *partial losses* not amounting to *five per cent.*

This clause was intended to prevent the underwriters from being continually harassed by trifling demands; but, at the same time that they provided against trifling claims for partial losses, they undertake to indemnify against losses, however considerable, that arise from general average.

(84). *What construction is put upon the words "warranted free from average unless general?"*

It has been settled that when goods are warranted from average, the underwriters are liable

to pay a total loss of a part, or a partial loss of the whole, if part of the thing insured go in bulk to the bottom of the sea ; and that (with the same warranty) they are not liable to pay a partial loss, though it be, in fact, a total loss of a part, if the loss be the consequence of sea damage. Stevens & Benecke on Av., 405.

The exception of all particular average does not wholly protect the underwriters from liability, on account of the perishable nature of the article. It does not purport to exempt the underwriter from total loss by damage to the article, though such total loss may be owing to its character and qualities, in concurrence with the perils insured-against. Phillips on Ins., 1776.

(85). *What is the meaning of the words "unless general?"*

That in all cases the underwriter shall be liable to the payment of general average, whatever may be the amount. Stevens & Ben., 408. 3 Bur. Rep., 1550. Marshall, 225.

(86). *What is the meaning of the words "or the ship be stranded?"*

For a ship to be stranded within the meaning of the policy, it has been said, that she must be cast on shore by the violence of the winds and waves, or run aground to avoid a greater danger. Mar-

shall, 240. 4 M. & Selw., 503. Wells v. Hopwood, 3 Barn. & Adolph, 2. 3 Kent's Com., 323.

(87). *What is the rule as to storage, reloading, and other expenses of saving?*

The term "*particular average*," as understood at Lloyd's, does not comprise the *particular charges*, or the expenses incurred for saving or preserving the cargo or freight, such as warehouse-rent in an intermediate port, which is considered a particular charge on the cargo, and expenses of reloading, which are made a particular charge on the freight. These charges, however small they may be, are paid by the underwriter, independent of the particular average. Hence it is clear they cannot be *added* to the particular average, for the purpose of ascertaining whether this amounts to five per cent., and that the underwriter is not liable, unless the particular average by itself amount to the stipulated per centage. For the same reason, general and particular average cannot be added to make the underwriter liable, if they jointly amount to five per cent. Stev. & Ben, on Av., 425.

(88). *Can successive losses be combined to make the underwriter liable?*

The opinion prevalent at Lloyd's seems to be, that each damage by itself should amount to the stipulated percentage to make the underwriter liable. Stev. & Ben 426.

(89). *May the expenses of surveys, certificates, and protests be included in determining whether a loss comes within the exception?*

It appears they may, though many differ on this point; and, to put this question at rest, some policies provide that the underwriters shall not be liable for particular average unless it amounts to the percentage stipulated in the exception, "exclusive of the expenses incurred for the purpose of proving the loss." This form of policy was adopted in Boston in 1825. *Phill. on Ins.*, 1791. 2 *Magens*, 238.

ABANDONMENT.

(90). *What is abandonment as understood in the policy of insurance?*

An abandonment is an act on the part of the assured, by which he relinquishes and transfers to the underwriters his insurable interest; or, in other words, it signifies a giving up to the underwriters of the thing insured, or such part of it as may remain, on a loss taking place. 2 Burr., 696. Phill. on Ins., 1490.

(91). *What is necessary in order to constitute a right to abandon?*

The right to abandon must arise upon the object of the insured being so far defeated that it is not worth his while to pursue it. Such a loss is equally as inconvenient to him as if it had been total. For instance, if the voyage had been absolutely lost; or not worth pursuing, if the salvage

be very high, suppose a half ; if further expenses be necessary ; if the insured will not engage, at all events, to bear that expense, though it should exceed the value, or fail of success ; under these and many other like circumstances, the assured may disentangle and abandon.

(92). *What is a total loss within the meaning of a policy of insurance ?*

A total loss of a subject of an insurance is where, by the perils insured against, it is destroyed, or so injured as to be of trifling or no value to the assured ; or is taken out of the possession and control of the assured, whereby he is deprived of it ; or where the voyage or adventure for which the insurance is made is otherwise broken up by the perils insured against. Phill. on Ins., 1485.

(93). *What is meant by constructive or technical total loss ?*

A constructive or technical total loss is one in which some part or remnant of the subject insured is surviving, or some claim accruing from it against third persons. Phillips on Ins., 1487. *Olivera v. Union Ins. Co.*, 3 Wheat., 103. *Gardner v. Smith*, 1 John's Cas., 141. *Abbott v. Browne*, 1 Caine's R., 292.

(94). *What is the rule as to the quantum of damages that may constitute a technical total loss?*

Damage to a vessel by any of the perils of the sea, on the voyage insured, which could not be repaired at the port to which such vessel proceeded after the injury, without an expenditure of money to an amount exceeding half the value of the vessel at that port after such repairs, constitutes a total loss. 3 Kent's Com., 276. *Center v Amer. Ins. Co.*, 7 Cow. 564. *Peele v. the Merchants' Ins. Co.*, 3 Mason's Rep., 28, 69, 72.

(95). *Within what time after notice of the loss must abandonment be made?*

Within a reasonable time; and what is a reasonable time, must depend on circumstances, to be judged of by a jury. The insured may wait a reasonable time to ask for advice and information to enable him to decide whether he may legally abandon; and there may be other circumstances which may excuse some delay. But the delay must be *bona fide*, not with a view to speculate on events. *Mitchell v. Edie*, 1 Term Rep., 608. *Martin v. Crockatt*, 14 East.'s Rep., 465.

(96). *When the assured receives notice of a loss, must he elect whether he will abandon or not?*

After receiving notice of a loss, it becomes incumbent on him to elect whether he will abandon

or not; and if he intends to abandon, to give notice of such intention to the underwriters. 06

(97). *In what case does the right to abandon for a technical total loss, in a case of a policy on a ship, exist?*

The right to abandonment exists whenever, from the circumstances of the case, the ship, for all the useful purposes of a ship on the voyage, is for the present gone from the control of the owner, and the time when she will be restored to him, in a state to resume the voyage, is uncertain or unreasonably distant, or the risk and expense are disproportioned to the expected benefit and objects of the voyage. In such case the law deems the ship, though having physical existence, as ceasing to exist for the purposes of utility, and, therefore, subjects her to be treated as lost. *Peele v. the Merchants' Ins. Co.*, 3 Mason's Rep., 96.

The right of abandonment does not depend upon the certainty, but upon the high probability of a total loss, either of the property or voyage, or both.

The right to abandon must necessarily depend upon the amount, and not on the cause of the loss. *Cambridge v. Anderson*, 1 Ry. & M., 60, 2 B. & C., 691, 1 Bing., 443.

(98). *Has an agent who insures, the right to abandon for his principal?*

He has.

(99). *Is mere fear a just cause of abandonment?*

The fear of a loss is not in itself a just cause for abandonment. *Craig v. United Ins. Co.*, 6 John's N. Y. R., 250. *Amory v. Jones*, 6 Mass. Rep., 321. *Smith v. the Universal Ins. Co.*, 6 Wheat. U. S. Rep., 176. *Brewer v. Union Ins. Co.*, 12 Mass. Rep., 170.

(100). *If a ship has not been heard from for so long a time, as to be a ground of presumption that it has perished by the perils of the seas, may a total loss be recovered on the ship without abandonment?*

It may. *Green v. Brown*, 2 Str., 1199. *Newby v. Read*, Park., 106. *Twemlow v. Oswin*, 2 Camp., 85. *Brown v. Neilson*, 1 Caine's, 525.

(101). *What is the definition of a total loss as given by Mr. Justice Story?*

Mr. Justice Story gives the following scientific and accurate definition of a total loss :

"The right of abandonment has been admitted to exist where there is a forcible dispossession or ouster of the owner of the ship, as in the case of capture ; where there is a moral restraint or detention which deprives the owner of the free use of the ship, as in the case of embargoes, blockades, and arrests ; where there is a present total loss of the physical possession and use of the ship, as in the case of submersion ; where there is a total loss

of the ship for the voyage, as in the case of shipwreck, so that the ship cannot be repaired in the port where the disaster happens; and, lastly, where the injury is so extensive that, by reason of it, the ship is useless, and the making repairs would exceed the value. The right to abandon exists whenever, from the circumstances of the case, the ship, for all the useful purposes of a ship for the voyage, is for the present gone from the control of the owner, and the time, when she will be restored to him in a state to resume the voyage, is uncertain or unreasonably distant, or the risk and expense are disproportionate to the expected benefit and objects of the voyage."

(102). *In case of shipwreck or stranding, without such injury to the ship as to prevent it from being got afloat and repaired within a reasonable time, at a reasonable expense, has the assured a right to make an abandonment of the ship?*

He has no right, in such a case, to make an abandonment. *Peele v. Merchants' Ins. Co.*, 3 Mason, 27. In giving the opinion of the court, Mr. Chief Justice Parsons said: "When the ship is stranded, the assured cannot, for this cause merely, immediately abandon. By some fortunate accident, by the exertions of the crew, or by extraneous assistance, the ship may be again floated, and rendered capable of pursuing the voyage; in such case

the insurers are only answerable for the expense occasioned by the stranding, and repairing the damage. But, undoubtedly, when, by the stranding, the voyage is defeated, the owner may abandon; and the stranding of the ship may prove the destruction of the voyage—either by her afterwards becoming a wreck, before she shall be put afloat, or by circumstances accompanying the accident.” *Wood v. Lincoln and Kennebeck Ins. Co.*, 6 Mass. R., 479.

(103). *If the ship be stranded on a coast where no assistance can be procured to get her afloat, may an abandonment be made?*

If it is on a coast where no assistance can be procured to get her afloat, or where materials and workmen cannot be had to make such repairs as to render her safely navigable to some place convenient for making complete repairs, an abandonment may be made.

(104). *If a ship is deserted at sea by her crew, on account of sea damage, and brought by others into a port where the assured may have her restored to him, can he abandon?*

He cannot, unless she comes in so damaged and encumbered with liens for repairs and salvage that the loss is still thereby a total loss. *Holdworth v. Wise*, 7 B. & C., 794.

(105). *If the ship arrives at the port to which it was insured, so damaged by the perils insured against that it cannot be restored to a navigable condition for the service to which it was before adapted, or is not worth repairing, may the assured abandon?*

There appears to be no reason why the ship may not be abandoned at the port of destination, if she arrives there in a disabled state, not capable of being repaired, or not worth repairing. *Phill. on Ins.*, 1532. In a case that occurred in Pennsylvania, a total loss was claimed under a policy on a ship that had arrived at the port to which she was insured, and no objection was made on this account merely. *Ralston v. Union Ins. Co.*, 4 Binn, 386.

(106). *What is the general rule in the United States as to abandonment?*

It is a general rule in the United States, that, if the ship or goods insured are damaged to more than half of the value by any peril insured against, or more than half of the freight is lost, the assured may abandon and recover for a total loss. *Clarkson v. Phoenix Ins. Co.*, 9 John's, 1. *Fontaine v. Phoenix Ins. Co.*, 11 John's, 293.

Mr. Chief Justice Parsons considered damage to the ship, exceeding half its value, to be a constructive shipwreck. He says: "When the ship becomes a wreck by any of the perils insured against, it is generally a total loss. The ship becomes a wreck

when, in consequence of the injury she has received, she is rendered absolutely unable to pursue the voyage without repairs exceeding the half of her value." *Wood v. Lincoln and Kennebeck Ins. Co.*, 6 Mass. R., 479, at p. 482.

(107). *Are there any cases where the loss may be a total, the damage or loss not exceeding fifty per cent.?*

Where the ship, rendered unseaworthy by the operation of the perils insured against, is in a foreign port, in which the master cannot raise funds requisite for repairs, by bottomry or any other means, he may make sale of the ship, and the loss is total, though the expense of repairs would be less than half of its value when repaired, if he could have procured the means for repairs; and the underwriters will be liable for a total loss, unless it is the fault of the assured not to have provided the master with funds or credit. *American Ins. Co. v. Ogden & M'Comb*, 15 Wend., 532.

(108). *Does the rule of constructive total loss, by damage over fifty per cent., where there is no provision to the contrary in the policy, refer to the value of the ship for sale at the time of the loss, or to the value in the policy?*

Mr. Justice Story adopts the value for sale at the time of the loss. *Peele v. Merchants' Ins. Co.*, 3

Mason, 27. Patapsco Ins. Co. v. Southgate, 5 Peters' Sup. Ct. R., 604.

A damage over fifty per cent. of the value of the vessel, when repaired, is a constructive total loss of the vessel in case of the policy containing no express provision to the contrary, and not of one-half of its value in the policy.

As to New England policies, see No. 292.

(109). *If the assured, or the master or agent of the assured, has proceeded to make complete repairs, and he afterwards tenders an abandonment before such repairs are made, will it be valid?*

The abandonment will be invalid, whether the loss be over or under fifty per cent. Humphrey v. Union Ins. Co., 3 Mason's R., 429.

(110). *Do partial repairs at a port of necessity, to enable the vessel to go to another in ballast, defeat the right to abandon?*

They do not, if complete repairs would exceed half of the value. Saurez v. Sun Mutual Ins. Co., 2 Sandford's New York Sup. Ct. R., 482.

(111). *In computing a total loss, by damage over fifty per cent., should a third for new be first deducted?*

The rule has been adopted by the Supreme Court

of the United States, that a deduction of a third for new is not to be made in estimating the amount of the loss. *Bradlie v. Maryland Ins. Co.*, 12 Peters' Sup. Ct. R., 378.

(112). *What is the effect of a sale by the master, bona fide made for the benefit of all concerned, of a ship and cargo?*

The underwriters are liable for the loss, provided the sale was a matter of necessity.

(113). *What is the rule as to the captain's obligation to tranship cargo, in case of innavigability of the ship?*

That, if there be another vessel in the same or a contiguous port which can be had, the duty is clear and imperative upon the master to hire it; but still the master is to exercise a sound discretion adapted to the case.

(114). *What is understood by the term "innavigability?"*

Innavigability, in the sense of the law of insurance, is when the vessel, by a peril of the sea, ceases to be navigable by irremedial misfortune.

The ship is relatively innavigable, when it will require almost as much time and expense to repair her as to build a new one. 2 Kent, 323.

(115). *What is understood by a total loss of goods?*

A total loss of goods is where they are destroyed by the perils insured against, or so injured as to be of inconsiderable value for the purposes of the intended destination and use, or the voyage or adventure upon which they are insured is thereby broken up. Phillips on Ins., 1598.

(116). *In a policy on goods, by what rule is the "one-half value" to be ascertained?*

The rule in that case is, to ascertain the amount of injury by the difference between the gross proceeds of the sound and damaged goods. 2 East's Rep., 581. 3 Kent, 330.

(117). *What is understood by "stranding," in a policy?*

A stranding, in the sense of the policy, is, when a ship takes ground, not in the ordinary course of navigation, but by accident, or force of wind or sea, and remains stationary for some time. The vessel must ground from an accident happening out of the usual course of navigation. Wells v. Hopwood, 3 Barn & Adolph, 2.

(118). *What is the effect of an abandonment legally made?*

An abandonment, once rightfully made, is bind-

ing and conclusive between the parties; and the rights flowing from it become vested right, and are not to be divested by subsequent events. 3 Kent's Com., 324.

If the abandonment be legal, it puts the underwriters completely in the place of the assured, and the agent of the assured becomes the agent of the underwriters. *The Chesapeake Ins. Co. v. Starke*, 6 Cranch Rep., 268. *Somes. v. Sugrue*, 4 Carr & Payne, 275.

(119). *Is any particular form necessary to constitute a valid abandonment?*

No particular form is necessary, nor is it indispensable that it should be in writing. But, in whatever mode or form it is made, it ought to be explicit, and not left open as a matter of inference for some equivocal acts. The assured must yield up to the underwriter all his right, title, and interest in the subject insured; for the abandonment, when properly made, operates as a transfer of the property to the underwriter, and gives him a title to it, or what remains of it, as far as it was covered by the policy. 3 *Marine Insurance*, 599. *Phillips on Ins.*, 447.

The assured must state the grounds of abandonment, and the notice must be founded upon such facts as would sustain abandonment when made.

(120). *What is the rule as to the abandonment of freight?*

That, in case of a technical total loss of a vessel, if no freight *pro rata* is earned, or if the expense of sending on the cargo by another vessel will exceed a moiety of the freight agreed on by the charter party, it is a technical loss of freight, which authorizes an abandonment of it. *American Ins. Co. v. Carter*, 4 Wend., 45.

(121). *What is the rule as to the right to abandon memorandum articles?*

That a loss of the voyage for the season, by the perils of the sea, is not a ground for abandonment upon a policy on goods with a clause of warranty, free from average, etc., where the cargo is in safety, and not of such a perishable nature as to make the loss of voyage a loss of the commodity, although the ship be rendered incapable of proceeding on the voyage. *Hunt v. Royal Exchange Assurance Co.*, 5 Maule & Selw., 47.

If the cargo be of a mixed character, no abandonment, for mere deterioration of value during the voyage, is valid, unless the damage on the memorandum articles exceeds a moiety of the whole cargo, including the memorandum articles. *Morgan v. U. S. Ins. Co.*, 1 Wheat. Rep., 224.

In case of perishable articles within the memorandum, the insurer is secure against all damage to

them, whether great or small, whether it defeats the voyage, or only diminishes the price of the goods, unless the articles be completely and actually destroyed, so as no longer physically to exist. 3 Bur. Rep., 1550. Park. on Ins., 151.

(122). *The following elaborate report of the decision of Judge Duer, in the Supreme Court of New York, on a highly important case, in which the law of abandonment came into question, appeared in the Insurance Monitor, for June, 1856.*

As it thoroughly exhausts the questions in this important branch of commercial law, it is here given, and will be found worthy of being carefully studied. To use the words of the editor of the Insurance Monitor, "It is really a credit to the New York bench, and every insurance agent and officer will derive valuable information from a careful perusal of this decision:"

New York Superior Court. General Term, Feb., 1856. Elisha Ruckman against The Merchants' Louisville Insurance Co.

STATEMENT OF THE CASE.

The action was upon a valued policy of insurance upon the schooner "Margaret Hopping," for \$3,000, on a voyage from New York to San Francisco, dated December 22d, 1849, the valuation being \$12,000.

The complaint alleged, that she sailed on the 21st December, 1850, with a cargo of lumber and other

goods; that on the 4th March, 1851, the yellow fever broke out, and the master and two of the crew died; that the rest were sick; and, storms being encountered, she put into St. Catharine's, Brazil, 12 March, 1850; that there she was repaired, and all the expenses, including care of her cargo, amounted to \$364, all of which had been paid except \$100.

For a second cause of action, it alleged, that she sailed from St. Catharine's on the 7th June, 1850, under command of Captain Dean, who had been appointed by the American Minister, and with a new crew; that she encountered violent gales, and was obliged to put into Valparaiso, October 1st, 1850; that she was surveyed and repaired, "which repairs, including the necessary charges and expenses of the vessel, and of taking care of her and her cargo," amounted to a moiety of her value; that all her cargo was sold to pay the repairs, as no money could be borrowed, and, this proving insufficient, "leaving a balance due by the vessel," which he, the master, was obliged to pay before he could leave port, and, being unable to borrow on bottomry, he abandoned the voyage, and sold the vessel, whereby she was wholly lost to the plaintiff.

It then alleged a loss by the barratry of the master, in taking and carrying away the vessel.

That plaintiff heard of the loss about the 8th of January, 1851, and abandoned to the defendants, and made proof, etc., and claimed a total loss.

DEFENCE.

The answer admitted the policy, and the main incidents of the voyage, but denied that the vessel was injured to half her value when she put into Valparaiso; it admitted that she was fully repaired before any of the cargo, and before she, was sold.

It averred that the money to pay for repairs might have been procured, and admitted that the sale of the vessel and cargo was made by the master under a mistake of his duties and rights, and claimed that it was unauthorized, and that the voyage was not broken up by any of the perils insured against.

That if the master could not procure money, it was the plaintiff's neglect in omitting to provide him with funds or credit; and that if the vessel was lost, it was by the plaintiff's fault and negligence.

It denied the barratry.

It stated that the plaintiff had ratified the sale of the vessel and cargo, and that he had accepted and applied to his own use the proceeds, after notice of all the circumstances.

It denied the abandonment and proof of loss.

The principal facts, as established on the trial, were the following:

The vessel sailed from New York without any letters of credit, and with only \$250 of funds in the master's hands.

She put into St. Catharine's in distress, and was there repaired, as alleged in the complaint; and the loss thereby was afterwards paid in full, the defendants paying their share, being \$459·72.

For these repairs a bottomry bond was given by the master to Maxwell, Wright & Co., for \$3,479·26, in the usual form, and she sailed thence on the voyage with a new master.

The schooner, after encountering heavy weather, put into Valparaiso, 1st October, 1850; and, being surveyed, was found sound in the hull, but needed some new spars, and new sails and rigging, which would cost about \$2,500 to \$3,000.

These repairs were commenced immediately, and all completed except the rigging, which would cost about \$500, when the master advertised for a loan on bottomry, to raise funds to pay the expenses, which he did not procure.

The master made no effort to forward the cargo by another vessel, but sold it all at public sale, to raise money to pay for repairs, for \$1,907·25, which netted \$750·06; and this being insufficient, he sold the vessel at private sale, on 15th March, 1850, for \$9,000, which netted \$8,370. He also sold chronometer, etc., for \$275. With the proceeds he paid the consul's charges, \$1,322·39; paid the bottomry bond to Maxwell, Wright & Co., \$3,479·26; retained for his own bill \$1,539·97, including \$400 for expenses in returning to New York, though he was engaged at St. Catharine's; and he had in his hands

the remainder, being \$1,454.50, which he remitted to the plaintiff in bills of exchange, in a letter of the 24th November, 1850. He had previously written to the plaintiff; but no information of any kind in regard to the vessel was given to defendants until January 8th, 1851, when the abandonment had been made, without disclosing that the proceeds of the vessel had been received and applied to the plaintiff's use, and without any details of the result of the sales.

The plaintiff subsequently compromised the bottomry bond in New York for \$2,319.51, and on his order Maxwell, Wright & Co. paid over for his own use the sum which the master had deposited with them, \$3,479.28.

The steamer left Valparaiso regularly at the close of every month, per Panama, with a mail for New York, and the master wrote by her to the plaintiff; and, the time of transmission being about thirty-five days, the plaintiff must have been in possession of information, as to her condition, as early as December, 1st, 1850, but it was not made known to the defendants.

The defendants offered to pay a partial loss only.

A verdict was taken for the plaintiff, subject to the opinion of the court, upon the questions of law raised on the trial, subject to adjustment.

Separate suits were brought upon the different policies, upon the vessel, cargo, and freight; and similar suits were brought against the Astor Mu-

tual Insurance Company, and the Union Mutual Insurance Company, upon like policies.

Present : OAKLEY, Ch. J., and DUER, J.

Messrs. Cutting and Lord, for plaintiff.

Mr. Wm. Curtis Noyes, for defendants.

DUER, Justice, delivered the opinion of the court ; and, after stating the material facts of the case, proceeded as follows :

Whether upon these facts the plaintiff is entitled to recover a total loss upon the vessel, is the first and the most important of the many questions which these cases involve, and it will be necessary for us to determine. If this question shall be decided in favor of the plaintiff, it has been contended, that his right to recover a total loss, upon the cargo and freight, is a necessary consequence ; but we think that there are special circumstances that distinguish the case from those in which this consequence has been held to follow. It will be seen hereafter, that the questions arising upon the cargo and freight policies are in reality distinct, and must, therefore, be separately considered.

The right of the plaintiff to recover a total loss upon the vessel, as we understand the arguments of his counsel, is placed upon two grounds.

First. The inability of the master to procure at

Valparaiso the necessary funds for repairing the vessel, so as to enable her to prosecute her voyage.

Second. The sale of the vessel, which, under the actual circumstances, it is alleged was necessary, and, consequently, justifiable. We are, therefore, to inquire whether, upon either of these grounds, the abandonment can be sustained; for, if not, the complaints upon the vessel-policies must be dismissed, or there must be a new trial; and, for the purpose of a discussion, we shall assume, that the best exertions of the master, and all that the law requires, were used by him, to raise the necessary funds, and that the vessel, notwithstanding the repairs she had received, was incompetent, when sold, without further repairs, to pursue her voyage. We are not, however, to be understood as saying, that these facts are so clearly established by the evidence that further proof, in relation to each of them, may not hereafter be justly required.

First. Was the mere inability of the master to procure, at Valparaiso, the funds that he needed for repairing the vessel, a justifiable cause for breaking up the voyage?

When a vessel, disabled by the perils of the sea, is in a port of necessity, and it is ascertained that the cost of her repairs, making the usual deduction, will exceed a moiety of her value, the loss, although in fact partial, is total by construction of law, and the owner, if he is insured, and in due season elects

to abandon, may demand its payment. His right to abandon is then unqualified and absolute. But it is not upon this ground alone that a vessel, rendered innavigable by the perils insured against, may be rightfully abandoned; for, although the estimated cost of her repairs may be less than half her value, yet if, by the exercise of that diligence, and the use of those means which the assured and his agents are bound to employ, she cannot be placed in a condition to perform her voyage, it cannot be doubted, that there is a constructive total loss, the payment of which, upon a proper abandonment, may be justly claimed. When the impossibility of making the necessary repairs is occasioned by the want of materials and workmen, it is not denied that such is the law; but we consider the law to be just as clearly settled, that it is quite immaterial whether the impracticability of making repairs when the vessel is in a port of distress, proceed from the want of materials and workmen, or of the necessary funds or credit. It is the existence of the fact, and the necessity of breaking up the voyage which it creates, that justify an abandonment; and such is not only the opinion of text-writers, foreign and domestic, of the highest authority, but, in many adjudged cases, has been the language of the court.

We cannot, therefore, hesitate to reject the position for which the learned counsel for the defendants contended; namely, that the inability of the

master to raise the necessary funds for repairing the vessel, must in all cases be attributed to the negligence of his owner, who is bound to furnish him with all the funds or credit that the possible exigencies of the voyage may require. In our opinion, no such duty rests upon the owner. It is not pretended that there is any general usage that creates a duty, that in its operation would be an oppressive tax, and, speaking generally, an unnecessary burden. Nothing, it seems to us, would be more inexpedient and unreasonable, than to require that the owner shall supply the master with specie funds (for in a port of necessity letters of credit would probably be unavailing) equal in amount to three-fourths of the value of the vessel; that is, sufficient to defray the cost of all repairs short of a constructive total loss in any port of distress, however distant and obscure, into which the vessel, by the accidents of the voyage, may be driven; for such, in reality, is the extent of the obligation that the argument for the defendants, followed to its consequences, would impose. We are convinced that the decision of the Court of Errors, in the case of the *American Ins. Co. v. Ogden* (20 Wend., 287), the authority, on which the counsel for the defendants mainly relied, gives no sanction, nor even countenance to such a doctrine. Not only was the vessel, in that case, in her port of destination, but there had been a positive misapplication of the funds that ought to have been

applied to her repairs ; and it was upon these special circumstances that the judgment of the court was manifestly founded. The fullest, and perhaps the ablest opinion in that case is that delivered by Mr. Senator Verplank ; and we entirely concur with him in saying, that "The broadly-stated doctrine, 'that the want of funds wherewith to make repairs is not a valid cause of abandonment,' is not correct as a universal rule, but is applicable only to the cases where such want is chargeable to the want of ordinary diligence, or of good faith on the part of the assured or his agents." 20 Wend., 314.

The true and sole inquiry, therefore, is, what is the measure of the diligence that, for the purpose of repairing the vessel, when repairs are necessary, the master is bound to exercise? When unprovided with funds, what are the efforts that he ought to make? what the means he is bound to employ in order to supply the want? And these questions, to a certain extent, there is no difficulty in answering. If he cannot raise the sums that are needed upon the credit of his owner or his own, the law not only gives him the power, but makes it his duty, to raise them upon the security of any part, or of the whole, of the property and interests under his control. He may pledge vessel, freight, and cargo by bottomry, respondentia, or mortgage. And it is only when all these means have been resorted to with proper diligence, and have proved ineffectual, that he is justified in breaking up the voyage, or his owner,

if insured, has any title to abandon. But it by no means follows, from what has now been said, that the diligence and efforts of the master, in procuring the means of repair, are, in all cases, to be limited to the port in which the disabled vessel has found a refuge. Although neither the proper materials nor workmen are there to be found, nor the requisite funds there to be procured, it is by no means a necessary consequence that he may at once abandon the voyage, and sacrifice, by an immediate sale, the property intrusted to his charge. His obligation to repair the vessel, if repairable at an expense of less than half her value, may still subsist, and his failure to perform the duty operate to discharge the underwriters from all liability beyond the payment of a partial loss. If, without any prejudicial delay, or increase of expenses beyond a moiety of the value, the want of materials or workmen could have been supplied from a neighboring port, or the necessary funds have been obtained by a communication with his owner or consignee, the conduct of the master in breaking up the voyage and selling vessel and cargo, it seems to us, could never be justified, and would furnish no ground for the recovery of a total loss.

* * * * *

The principles that ought to govern the decision of the question, it may not be difficult to state ; but there is no fixed and invariable rule, nor, it may be added, any controlling precedent ; and it is, there-

fore, from the nature, terms, and reasonable interpretation of the contract of the parties, that the principle, which ought to govern us, must be derived. Since wager-policies are no longer tolerated, a contract of insurance is emphatically and purely a contract of indemnity, and the interests of commerce and of the public require that its true character as such should never be forgotten, and in all doubtful cases be strictly maintained. Hence, the breaking up of a voyage ought never to be sanctioned when it is certain that the ship-owner, if uninsured, would have continued to prosecute it ; nor, consequently, the abandonment of a vessel as innavigable ever be sustained when it is certain that the owner, if uninsured, would have elected to repair. When the policy is valued, it may frequently happen that the breaking up of a voyage, if a total loss may be recovered, would be far more advantageous to the ship-owner than its successful termination. It is plain that, in these cases, there is a direct temptation to dishonesty and fraud ; nor can it be doubted that this is a temptation which it is the duty of a court of justice, as far as possible, to remove. So long as the valuation in the policy is held to be conclusive, it cannot be wholly removed ; but its force may be greatly lessened by confining the power of abandonment within those limits which the nature and objects of the contract, the intention of the parties, and the dictates of reason and policy evidently prescribe.

The true principle upon which the whole doctrine of abandonment may be said to rest, and by which alone its application in converting a partial into a total loss can be justified, is that which, in the leading case of *Anderson v. Wallis* (2 M. & Sel., 240), is stated by Lord Ellenborough, with his accustomed brevity and force. It is, that an "abandonment is never to be authorized, except when at the time the loss was actually total, *or in the highest degree probable*;" and if we analyze the cases that have settled the law, as it now prevails in England, we shall find that it is this principle that runs through, explains, and justifies them all. To select an example from each class of cases: When the vessel insured is captured, there is an actual total loss; but as she may be recaptured or restored, an abandonment is necessary to warrant its recovery; a title must be vested in the insurers to give them the benefit of the "*spes recuperandi*." But when the vessel is stranded, the question, whether the loss shall be deemed partial, or so far total as to warrant an abandonment, will depend upon the nature and extent of the peril in which the vessel is involved, and the probable difficulty, hazard, and expense of attempting to deliver and repair her. When it appears that, by proper exertions, she might have been gotten off, and have been fully repaired at a moderate cost, the abandonment is void, and a partial loss only can be recovered; and to warrant the recovery of a total loss, it must be

proved that the delivery of the vessel from the peril was, upon reasonable grounds, judged to be impracticable, or not to be effected, unless at an expense that would absorb her value. In other words, it must be proved, that a loss actually total, although not then existing, was, in the highest degree probable. (*Fontaine v. Phoenix Ins. Co.*, 11 John's. 295. The "*Sarah Ann*," 2 Sumner, 255.) We shall not deny that, in the United States, we have departed widely from the *sound* doctrine of abandonment, by extending to the vessel that *moiety rule* which, in its original application, was confined to the goods, and which thus confined had itself no other foundation than the existing probability of an eventual total loss; but, although an error, which has proved a most fruitful source of litigation, and has broken up, at the expense of the underwriters, numerous voyages, that, uninsured, would have been completed, has become a part of our established law, we cannot see that this affords any reason whatever for departing from the general law of insurance in cases, which the moiety rule, as extended and expounded by our courts, has failed to embrace. We do not believe that constructive total losses, as giving a right to abandon, ought to be multiplied by any further violation of the principle by which alone their introduction into the contract of insurance can be defended or explained. We must, therefore, hold that, in all cases of damage or disaster to the ship from the

perils insured against, other than the cases to which the moiety rule may with certainty be applied, the question, whether the vessel was justifiably abandoned and sold, or ought to have been repaired, must be determined by a reply to the inquiry, whether the condition of the vessel was such as to justify the belief that all efforts for enabling her to resume the voyage would be fruitless, or that the delay, difficulties, and expenses attending them would be such, that a total loss was a highly probable result. We do not say that it is necessary that the inquiry be made in the exact form that has now been stated. On the contrary, we approve, and would adopt, in preference, that mode of submitting the question which for many years has prevailed in England, and which, in the case of *Irving v. Manning*, the most recent that we have found, was expressly sanctioned by the court of last resort. The question which, according to this decision, and many that preceded it, the jury should be required to answer, and upon their answer to which, their verdict will depend is, whether a prudent owner, if on the spot, and uninsured, in the exercise of a sound judgment, would have broken up the voyage and sold the ship, or have elected to repair. Substantially, the question has the same meaning as that of the probability of a future total loss; since it is only when a total loss is believed to exist, or to be highly probable, that a prudent owner, uninsured, would decline to repair.

It follows from this form of submitting the question, that it is not enough that the jury are satisfied that, in the case before them, the master acted in good faith, and in the honest belief that the course he followed was the best for the interests of all concerned. In the language of Lord Tenterden (1 Mood. & R., 54), the underwriters are not to be held liable unless the jury are convinced, not only that the judgment of the master was honestly formed, but that, under the circumstances in which he was placed, it was the best and soundest judgment that could have been formed.

It may possibly be said that, in the cases to which I have referred, the cause turned entirely on the question of the validity of the sale of the vessel, as made by the master, and not on the right of the assured to abandon; but as it is only when there is a constructive total loss, which justifies the breaking up of the voyage, that the sale of the vessel can be justified as necessary, the questions are, in truth, identical, nor, when the abandonment has not been made until the sale has taken place, can they be separated.

That, in cases of stranding, the course that an owner uninsured, in the exercise of the best judgment would have followed, furnishes the correct test of the right of the assured to abandon, has been distinctly admitted, both by Mr. Justice Story (The "Sarah Ann," 2 Sum., 215), and by Chancellor Walworth (American Ins. Co. v. Ogden, 20 Wen-

dett, 302); and we are not aware that any reason can be given why the test may not, with equal justice, be applied to every case in which an absolute right to abandon is not established by conclusive proof that the cost of repair would have exceeded half the value; and by limiting its application to such cases, that conflict of inconsistent rules, which Chancellor Walworth has deprecated, would be wholly avoided: no such conflict can arise.

Let us now apply the observations that have been made to the case before us.

For aught that appears, the condition of the vessel at Valparaiso was one of entire safety, and it is proved that the master might have communicated with his owner in this city, by the Panama route, and have received an answer within eighty, at the utmost ninety, days from the date of his letter. We are bound to presume that the plaintiff, upon being informed of the exact situation of the vessel, and of the inability of the master to make the repairs she needed, could and would have remitted to him the necessary funds, either in bills, or by opening a credit in his favor with a house in Valparaiso. Let an additional month be allowed for repairing the vessel, and another for the time that would have elapsed from the arrival of the vessel at Valparaiso until the failure of the master to raise the funds that he required: we have thus five months as the full period that would have elapsed, had the course that has been indicated

been followed from the first arrival of the vessel at Valparaiso, until she would have been fitted by sufficient repairs to resume the voyage. And the question, therefore, is, whether the fact, that this or even a greater delay in the resumption of the voyage must have intervened, had the master elected to remain at Valparaiso, until he obtained from his owner the funds that he required, created of itself, independent of any other circumstances, a constructive total loss, that warranted the master in breaking up the voyage, and justified an abandonment by his owner?

We are satisfied, both upon principle and upon the authorities, that to this very material question no other than a negative answer can be given. The mere continuance of a disabled vessel in a port of necessity, where she is in actual safety and is not exposed to further perils, furnishes no evidence whatever that, in the event, the partial loss will become total; and it is, doubtless, for this reason that it has been frequently decided, that a suspension of the voyage, merely temporary, is in no case a valid ground of abandonment of the vessel, nor, unless the goods are perishable, even of the cargo. In the cases of *Anderson v. Wallis* (2 M. & Sel., 240), and *Everth v. Smith* (*id* 247), the voyage was suspended, by the detention of the vessel in port, for nearly six months; and yet, in each case, the abandonment was held to be void, and a partial loss only to be recoverable. In the case of *Bradlie*

in *The Delaware Ins. Co.* (12 Peters, 400), in which Mr. Justice Story delivered the judgment of the Supreme Court of the United States, the foregoing and other cases are carefully reviewed; and the learned judge, speaking in the name of the court, deduced from them the following as the true and established doctrine. His language is, that "the mere retardation of the voyage by perils insured against, not amounting to, nor producing, a total incapacity of the vessel eventually to perform the voyage, cannot, upon principles well established, be admitted to constitute a technical total loss, which will authorize an abandonment." He adds, that "a retardation, for the purpose of repairing damages from the perils insured against, the damages not exceeding a moiety of the value of the ship, falls directly within the doctrine."

It is not possible for us to say, that the application of this established doctrine to the present case is at all varied or affected by the fact that, when the master resolved to sell instead of repairing the vessel, the voyage, from the sale or damaged condition of the cargo, had ceased to be worth pursuing. In other words, that it was no longer possible that the plaintiff, either as the owner of the vessel or of the cargo, could derive from the further prosecution of the voyage the benefits he had expected. It is true that, in the time of Lord Mansfield, the loss of the voyage, as the loss of its anticipated profits was termed, in *Goss v. Withers*,

Hamilton v. Mendez, *Mills v. Fletcher*, and in many other cases, was held to be a valid and sufficient cause of abandonment even of the ship ; but, not only were these cases directly opposed to the prior decision of the House of Lords, in *Pole v. Fitzgerald*, but they have since been expressly overruled by many decisions in the English courts and in our own. The established doctrine now is, that the insurance is not on the voyage. The meaning of the contract is, not that the voyage, as to its beneficial results, shall not be defeated, but that the vessel shall not be prevented from completing it, by the perils insured against ; and, in judgment of law, the vessel is not so prevented so long as she remains in the possession of the master, and, although disabled, may be and ought to be repaired. It is a necessary conclusion from the remarks we have made, and the authority we have cited, that the delay in the prosecution of the voyage that would have resulted from the detention of the vessel for repairs, even combined with the fact, that the objects of the voyage as a mercantile adventure were wholly defeated, were insufficient to justify the proceedings of the master, and, consequently, to warrant the claim of the assured for a total loss. Looking to these facts alone, we are clearly of opinion that the case belongs to the class of those, in which it has been held that it was the plain duty of the master to have communicated with his owner before he resolved on breaking up the voyage and selling the

ship, and that his neglect in the performance of this duty entitled his owners to repudiate his acts ; and we agree entirely with Mr. Phillips, that, in such cases, it is a partial loss, only, that can be recovered from the underwriters. Proceedings that would have been void as against his owners, if uninsured, can never be treated by them, when insured, as valid against the underwriters.

But, although the claim of the plaintiff for a total loss cannot, we think, be sustained upon the evidence now before us, it is possible other circumstances may have existed, which, if proved upon the trial, taken in connection with those that have been proved, would have entitled him to the judgment he demands. It may still be true that the real state of the facts was such, that the detention of the vessel at Valparaiso until the master could communicate with his owner and receive his answer, would have rendered a loss actually total in the highest degree probable. It may be that, from insecurity of the harbor, the season of the year, the action of worms upon her bottom, or other causes, the vessel, during her necessary detention for repairs, would have been exposed to such additional hazards, that a prudent owner, uninsured, in the exercise of a sound discretion, would have determined to sell instead of repairing her. No proof in relation to these facts was given upon the trial that has been had ; but, as it is alleged that the proof exists, we think it will not be unreasonable

to grant a new trial for the purpose of enabling the plaintiff to produce it, unless upon some other ground his claim for a total loss can be sustained.

The next inquiry, therefore, is, whether the sale of the vessel created of itself a total loss, for which the defendants are liable; and we reply that, according to all the authorities, such could not be the effect of the sale, unless it was rendered necessary by the perils insured against, or was in itself an act of barratry. It has been truly said by an eminent judge, that "There is no such head of insurance law as a loss by sale"—Bayley, J. (1 Mood. & Rob., 19); and the meaning is that, unless the facts that precede the sale constitute a constructive total loss, none can arise from the fact of sale, however disastrous in its result to the owner, for which the insurers can be made responsible. In the words of Mr. Arnould, "the mere fact of a sale, irrespective of the state of the ship which made it necessary, can never give the assured a right to abandon"—(12 Arnould, 1082); and in those of Mr. Phillips, that "if the circumstances rendering a sale necessary do not constitute a total loss, a sale by the master will not make it such, unless it is a case of barratry"—(2 Phillips, 305, § 1571, 3d ed.); and the language of these judicious writers is fully borne out by the cases to which they refer, and which we deem it needless to cite.

The good faith of the master in the case before

us, is undoubted, and hence the sole question is, whether the sale of the vessel, as made by him, was justified by a necessity constituting a constructive total loss. The allegation is, that the creditors, by whom the partial repairs on the vessel had been made or furnished, had acquired a lien which the master was unable to discharge, and which they threatened to enforce, and, consequently, that a sale by the master was necessary to prevent a forced sale by process of law. But, admitting that the facts thus relied on have been sufficiently proved, it is impossible to say that the necessity which they created was a consequence of the perils insured against, since it is manifest that it arose entirely from the voluntary and injudicious acts of the master in ordering repairs to be made when he was unprovided with funds to defray their cost. Nor is this all: even where a lien for repairs is properly created, its existence furnishes no ground for an abandonment; nor is a partial converted into a total loss, even when the lien is enforced by a sale of the vessel under an admiralty sentence. To prevent a sale by the discharge of the lien is the duty of the owner, and the underwriters are not responsible for a loss not attributable to the perils insured against, but exclusively to his neglect or that of his agents. We are, therefore, clearly of opinion that, unless the abandonment can be sustained upon grounds wholly independent of the sale of the vessel, and of the supposed necessity by which

it is sought to be justified, it is a partial loss, only, that the plaintiff will be entitled to recover.

The objections, that have been urged on the part of the defendants to the recovery, in any event, of a total loss, must next be considered. If these objections or any of them are valid, instead of ordering a new trial, the loss as partial must be properly adjusted, and a final judgment be rendered for its amount.

There is no weight in the objection, so far as appears from the evidence now before us, that the abandonment was improperly delayed. The plaintiff was not bound to abandon when he first received the intelligence of the arrival of the vessel at Valparaiso. He had in truth no right to abandon until he was informed that the voyage was broken up, and the vessel sold in consequence of the inability of the master to procure the funds for her necessary repairs. The letter containing this information was probably not received by him until late in the month of December, and we cannot say that his abandonment of the 8th January following, was not made in due season. There was no delay by which the defendants could have been prejudiced.

The next objection is, that the right to abandon, if it existed at all, was divested by the sale of the vessel before the abandonment was made. Where the total loss is claimed on the sole ground of the innavigability of the ship, the underwriters, it is said, may defeat an abandonment by electing them-

selves to make all necessary repairs ; and, if this be true, it follows that, to enable them to make this election, the abandonment must be made while the vessel still remains in the possession of the assured. It cannot be said that this doctrine is unreasonable in itself, or is destitute of authority ; but, although it seems to have been adopted by the Supreme Court of Massachusetts, it was, in our judgment, decisively rejected by our own Court of Errors, in the leading case of *Center v. the American Ins. Co.*, 7 Cow., 564 ; S. C. 4, Wendell 45. The law in this State we consider now settled, in conformity to the opinion of Mr. Justice Story, that the right of abandonment is not a shifting right dependent upon the will of both the parties ; but that, where it has once rightfully attached, its exercise by the assured cannot be prevented or defeated by any act or offer on the part of the underwriters.

Nor can we hold that the right of abandonment, in the present case, was divested by the election of the master to repair. Had the repairs been completed, or so far completed as to render the vessel capable of resuming the voyage, such, undoubtedly, would have been the result. But as the repairs made were only partial, and, as we infer from the evidence, left the vessel still unseaworthy, we see no reason to doubt that she was as properly a subject of abandonment, in her actual condition, as if no attempt to repair her had ever been made.

The question, whether the existence of a prior

lien, created by a bottomry, is a bar to an abandonment, is not, under the circumstances of the case, necessary to be considered.

If the voyage was rightfully broken up, the sale that followed was plainly justifiable ; and if, in the event of the recovery of a total loss, the defendants will be entitled to be credited, as salvage, with the whole proceeds of the sale, deducting only its necessary expenses, it is evident that the mere fact, that a bottomry bond had been previously in force, will furnish no ground of complaint. As it appears from the evidence that the whole of the partial loss that gave rise to the bottomry has been satisfied by the defendant, it seems a necessary consequence that, if chargeable with a total loss, they will be entitled, on the settlement of its amount, to the credit that has been stated.

The objections on the part of the defendants being thus disposed of, we retain the opinion that the purposes of justice require that, in the actions on the vessel-policies, a new trial shall be granted ; and we add that, upon such trial, the right of the plaintiff to recover a total loss will depend upon the answer that shall be given by the jury to the following questions, namely : whether, when the vessel was sold, the probability that the loss actually would ensue, should she be detained in port until the necessary funds for her repairs could be procured, and the repairs be made, was such that a prudent owner uninsured, in an exercise of a sound judg-

ment, would have decided, instead of repairing the vessel, to relinquish the voyage.

The questions that arise upon the cargo and freight-policies will not detain us long.

Even should the right of the plaintiff to recover a total loss upon the vessel be conceded or established, it seems to us evident that, upon the facts now proved and admitted, he cannot be entitled to recover a total loss of the cargo. It is true that the cargo was lost to him by its sale, and that this loss was total, diminished only by the net proceeds of the sale; but the *proximate* cause of the loss was the sale itself; and this, as it was not an act of barratry, was certainly not a risk covered by the policy; and if a consequence at all of the perils insured against, it was a remote and accidental, not a direct and necessary, consequence. The cargo was not sold on account of its damaged condition, but for the purpose of raising funds for repairing the vessel; and, without a violation of principle, and a disregard of the authorities, we cannot hold that the insurers on the cargo are liable for the loss that resulted. It is not a loss within the terms and spirit of their contract. The law is thus settled by decisions, of which the authority has not been denied; and we know of no distinction that can exempt the present case from the application of the doctrine that they establish. It has been said that, as the inability of the master to procure the funds that he needed existed when the vessel arrived at

Valparaiso, the loss was at that time constructively total ; that it is to this period, therefore, that the abandonment, when made, must be construed to relate ; and that, by its retrospective force, the master became, from that time, the agent of the defendants alone—their agent in the sale of the cargo as well as of the vessel—but from this view of the rights and relations of the parties we are forced to dissent. In our opinion, there was no right of abandonment, no constructive total loss, until the master determined to break up the voyage, in consequence of the failure of his efforts to procure the necessary means for its prosecution ; until then the master acted solely as the agent of the plaintiff, with the sole view to the protection of his interests in the completion of the voyage. The sale of the cargo, therefore, as made by him, was, in judgment of law, the act of the plaintiff as truly as if he had directed it in person.

It has also been contended that, as the vessel was never repaired, and it is proved that no other could have been procured to carry on the cargo to its port of destination, it may be justly considered as having been in fact lost from the perils insured against, and the defendants be precluded from setting up its prior sale as a defence, since, in all events, its sale must have been ordered ; but upon what principle underwriters can be made liable for a loss that would have happened from a peril insured against, had it not already taken place from

a different cause, we are unable, we must confess, to understand. If goods insured, *free from capture*, are seized and taken possession of by the enemy, and the ship, that contained them, having been released, and suffered to proceed on her voyage, foundered at sea, we cannot believe that an action for the recovery of a total loss could be maintained against the underwriters on the goods, upon the ground that, had they not been taken by the enemy, they would have perished with the ship.

Had a third person been the owner of the cargo, its sale would have given him an immediate right of action for the recovery of its value against the plaintiff, as owner of the vessel, and assuredly his right of action would not have been divested by the subsequent breaking up of the voyage. Let it be admitted that, in the events that have happened, he would have had an election to seek the recovery of his loss in an action against his insurers, or against the plaintiff. In all cases where such an election is given to the assured, his insurers, upon payment of the loss, are subrogated to his rights and remedies against the vessel and its owners; but where the same person is owner of both vessel and cargo, as in the case before us, it would be absurd to permit him to recover a loss for which he would himself be immediately liable to the very persons from whom its recovery is sought. To permit a recovery in such a case, would, in the words of Lord Den-

man, be a scandal as well as an absurdity; and, to avoid circuitry of action that would justify the scandal, such a recovery is never allowed.

But although the claim of the plaintiff to recover a total loss of the cargo cannot, in our opinion, be admitted, it seems not improbable that he has sustained, and is entitled to recover, a partial loss of a considerable amount. It appears that the cargo, when unladen at Valparaiso, was found to be greatly damaged; but what was the extent of this damage, and whether it was occasioned by the perils insured against, are questions which are left in uncertainty, and which, as the case now stands, we have neither the means nor the power to determine. That they may be properly submitted and determined by a jury, there must be a new trial in the actions upon the cargo, as well as upon the vessel-policies.

It follows, from the observations that have already been made, that there can be no recovery at all upon the freight-policies, and, consequently, that the complaints in these actions must be dismissed. The loss of the freight must be wholly ascribed to the voluntary act of the master in selling the cargo; and the loss, although total, was no more a consequence of the perils insured against than that of the cargo itself. The freight from New York to Valparaiso was necessarily lost by the sale of the goods, from which it was to arise; and there is no evidence, nor is it pretended, that, had the vessel been re-

paired, any freight would have been earned on her voyage from Valparaiso to her port of destination. Hence it is a total loss that the plaintiff is entitled to recover, if he has any right to recover at all; and, as the question of his right is determined against him, it would be idle to grant a new trial that could lead only to the same result as our *present decision*.

BOTTOMRY.

(123). *What is understood by bottomry?*

Bottomry is a contract by which the owner of a ship borrows money to enable him to carry on the voyage, and pledges the keel or bottom of the ship as a security for the repayment; or, in other words, a bottomry-bond is a contract for a loan of money on the bottom of the ship, at an extraordinary interest, upon maritime risks, to be borne by the lender.

The bond may be on time as well as on a specific voyage. Abbott on Shipp., 150. The brig "Draco," 2 Sumner, 157. Thorndyke v. Stone, 11 Pick., 183. Bray v. Bates, 9 Metcalf, 237.

(124). *What is necessary to constitute a valid contract of bottomry?*

Where more than statutable interest is reserved, the principal and interest must be put at hazard. Jennings v. Ins. Co. of Pennsylvania, 4 Binn, 244.

Rucher v. Conygham, 2 Peters' Adm., 295. The "Mary," 1 Paine C. C., 671.

(125). *In what cases can a valid bottomry-bond be made by the master?*

The master, merely as such, without authority or ratification otherwise expressly or impliedly given by the owner, can make a valid hypothecation of the vessel only when he is at so great a distance from the owner that it is not practicable, or is plainly inexpedient and unreasonable, to delay for instructions from him; and then only in case of necessity to obtain funds in order to save the vessel or prosecute the voyage, and only in case of its satisfactorily appearing, under the circumstances, to be a suitable way of obtaining the funds. Phill. on Ins., 1565.

Mr. Justice Story has learnedly investigated this subject. The ship "Fortitude" was bottomried at Calcutta, by the master, for the expense of repairs. The owners disputed the claim, on the ground that the repairs were not necessary, and were made through the gross misconduct and want of judgment of the master. No imputation of fraud or participation in the misconduct of the master was made against the lender, who was charged, however, with want of due diligence in his inquiries as to the true state of the ship. Story, J.—"It is agreed on all sides that the master is to be treated

as the general agent of the owner or employer of the ship, as to procuring repairs and supplies for the ship in a foreign port, in the absence of the employer; and it is generally agreed that this power is not unlimited, but is restricted to such repairs and supplies as are, in a just sense, necessary for the ship, under the actual circumstances of the voyage. There is a manifest difference between that necessity which will justify repairs, and that superadded necessity which will justify the giving of a bottomry-bond. To justify the giving of a bottomry-bond, it is not only essential that there should be a necessity for the repairs, but that there should also be a necessity for resorting to a bottomry-bond, in order to procure the proper funds to defray the expenditures. It is only when this is the only, or the least disadvantageous, mode of borrowing, that the master is at liberty to resort to it. The giving of a bottomry-bond is properly said to be justifiable only in a case of great extremity, of urgent necessity, or of extreme pressure." The ship "Fortitude," Haven, claimant, 3 Sumner's R., 228. The "Virgin," 8 Peters, 538. *Mervin v. Shailes*, 12 Conn., 489. The "Jane," 1 Dodson, 464. The "Orelia," 3 Hagg., 84, 86. The "Vibilia," 1 W. Rob., 10.

(126). *If the ship be lost, will the lender on bottomry lose his whole money?*

He will; but if not, he will receive his principal

and the stipulated interest, however it exceed the legal rate.

(127). *What is the difference between bottomry and respondentia?*

The one is a loan upon the ship, the other upon the goods; in the former the ship and tackle are liable, as well as the person of the borrower; in the latter, for the most part, recourse must be had to the person only of the borrower. Another observation is, that in a loan upon bottomry, the lender runs no risk though the goods should be lost; and, upon respondentia, the lender must be paid his principal and interest, though the ship perish, provided the goods are safe. Park. on Ins., 410.

(128). *In all other respects, is the contract of bottomry and respondentia upon the same footing?*

It is. The rules and decisions applicable to one, are applicable to both. Park. on Ins., 410.

(129). *What are the risks to which a lender on bottomry exposes himself?*

They are generally mentioned in the condition of the bond; and are nearly the same against which the underwriter, in a policy of insurance, undertakes to indemnify.

(130). *May bottomry and respondentia be insured?*

They may, provided it be specified to be such interest in the policy.

(131). *What is the rule as to the authority of the master to hypothecate the cargo?*

If he has no funds, and can obtain credit only on extremely exorbitant terms, he may resort to the hypothecation of the ship and pending freight, and if these do not suffice, then he may hypothecate the cargo.

(132). *Does the sale of the vessel by the master, in a foreign port, defeat a prior bottomry-bond?*

It does not. Thus, where the master sold his vessel at Bahia, it was held to be still subject to a previous bottomry-bond on returning to England. The "Catharine," 1 Eng. Law and Eq. R. (Press of Little, Brown & Co.), 679, S. C. 16. Eng. Jur. 231.

(133). *What is the interest of a borrower in bottomry and respondentia?*

The borrower on bottomry or respondentia may have an insurable interest in the property pledged, no less than a mortgager, but with this distinction, that the mortgager remains liable for the whole

loss upon the goods ; if they are lost, no part of his debt is discharged ; whereas, if the hypothecated ship or goods are lost, the borrower is discharged from his debt. *If, therefore, goods are hypothecated for the full value, the borrower is not interested in their safety, as far as the risks are assumed by the lender ; for, if they are saved, they go to satisfy the debt ; if they are lost by the risks, within the hypothecation, he is discharged from the debt. He is, accordingly, interested only so far as the value of the property exceeds the amount for which it is pledged.*

It has, accordingly, been decided, that the owner of a vessel bottomried for more than its full value, has no insurable interest in respect of the perils assumed by the lender. *Williams v. Smith*, 2 Caine's, 13.

The Statute of the 19th Geo. II., c. 37, limits the insurable interest of the owner of an hypothecated ship or goods, bound on an East India voyage, to "the value of his interest in the ship, or in the goods on board, exclusive of the money so borrowed." *Phillips on Ins.*, 307.

(134). *Can the master pledge the ship itself, and the personal credit of the owners ?*

He cannot. That the owner is *not personally* bound by the bottomry has been recently held in the *Nelson*, 1 Hagg., 169, 176.

(135). *Can a party, indebted to the owners of a vessel, lend money to her master on bottomry?*

He cannot, as he should satisfy the debt, and there would be no necessity for the bond. If, however, his debt be less than the sum so advanced, the bond is valid to the extent of the surplus.

(136). *Is there any settled form of contract in use on these occasions?*

There is not. Sometimes, an instrument in the form of a bond, at others, in the form of a bill of sale, at others, of a different shape, is made use of. But, whatever the form, the occasion of borrowing, the sum, the premium, the ship, the voyage, the risks to be borne by the lender, and the subjection of the ship itself as security for the payment, all usually are, and properly ought to be, expressed. It is absolutely necessary that the liability of the lender to the sea-risks should appear, or be fairly collected from the instrument, otherwise the reservation of maritime interest will render the security void, on the ground of usury, not only as a charge upon the ship, but also against the person of the borrower.

The following form is given by way of example:

(137). FORM OF BOTTOMRY-BOND.

Know all men, by these presents, that I, A. B.—

commander of the ship "Rochester," of London, in the kingdom of Great Britain, now lying at anchor in the port of Norfolk and Portsmouth, in the State of Virginia, in the United States of America—for myself and C. D., of London, aforesaid, merchant, and owner of the said ship "Rochester," am held and firmly bound unto E. F., of Baltimore, in the State of Maryland, in the said United States of America, merchant, in the penal sum of ten thousand dollars, for the payment of which, well and truly to be made unto the said E. F., his heirs, executors, administrators, or assigns, I hereby bind myself, my heirs, executors, and administrators firmly by these presents. In witness whereof, I have hereunto set my hand and seal, this —— day of ——, in the year 18—.

Whereas, the above-bound A. B. hath taken up and received of the said E. F., the full and just sum of five thousand dollars upon the bottomry of the said ship "Rochester," whereof the said A. B. is now master, at the rate of twenty per centum (20 per cent.) for the voyage from the port of Norfolk and Portsmouth as aforesaid, to the said port of London, for the purpose of enabling him, the said A. B., to procure the necessary repairs for the said ship to fit her for sea, she having put into the said port of Norfolk and Portsmouth in distress, and he, the said A. B., being destitute of the other means to obtain them; the said ship having permission to touch, stay at, and proceed to, all ports and places within the limits of the voyage. In consideration whereof, the usual risks of the seas, rivers, enemies,

fires, pirates, etc., are to be on account of the said E. F. And, for the further security of the said E. F., the said A. B. doth, by these presents, mortgage and assign over to the said E. F., his heirs, executors, administrators, and assigns, the said ship "Rochester," her boats, tackle, apparel, and furniture. And it is hereby declared, that the said ship "Rochester" is thus assigned over for the security of the aforesaid money so advanced to the said A. B., and shall be delivered to no other use or purpose whatever, until payment of this bond is first made, with the premium due thereon.

Now, the condition of this obligation is such, that if the above-bound A. B., his heirs, executors, or administrators shall and do, well and truly pay, or cause to be paid, unto the said E. F., or to his attorney in London, legally authorized to receive the same, his executors, administrators, or assigns, the full and just sum of five thousand dollars, being the principal of this bond, together with the premium which shall become due thereupon, at or before the expiration of ten days after the safe arrival of the said ship "Rochester" at her moorings in the river Thames, or, in case of the loss of the said ship "Rochester," such an average as by custom shall have become due on the salvage, then this obligation to be void and of no effect, otherwise to remain in full force and virtue. Having signed to three bonds of the same tenor and date, the one of which

being accomplished, the other two to be void and of no effect.

A. B. [L. s.]

Signed, sealed, and delivered, }
in the presence of }

G. H.

J. K.

(138). *May a bottomry-bond be given to consignees of the cargo by a master appointed by themselves?*

It is no objection to the validity of such a bond that it happens to be given to the consignees of the cargo, by a master appointed by themselves; the necessity of such appointment, and of borrowing by hypothecation, and the fairness of the transaction, being established. The "Alexander," Tate, 1 Dods. A., 278; The "Rubicon," 3 Hagg. A., 9.

(139). *Can the master hypothecate his ship in any other than a foreign port?*

It has been decided that the distinction between *home* and *foreign* port ought not to rest so much on the government of the country as on the proximity and facility of communication between the place where the master is called on to act, and the place where the owner resides.

From the decisions in the case of the ship "General Smith" (4 Wheaton, 438), and the "St. Jago de Cuba" (9 Wheaton, 409), it would seem

that the master has a right to hypothecate the ship in any other State of the United States than that to which the ship belongs, in case of necessary repairs, if no other means are within his reach to apply for the purpose.

A vessel, belonging to the port of Norfolk, in Virginia, may be hypothecated in the port of New York by the master, for necessary repairs, if the owner has no agent in New York. *Selden v. Hendrickson*, 1 Chief Justice Marshall's Dec. by Brockenbrough, 396.

But it must be remembered that the master cannot borrow on bottomry, except in cases of necessity, and where he has no other adequate funds in his power, and can obtain none upon the personal credit of the owner.

(140). *In suits on bottomry-bonds, what must the libellant prove?*

He must always prove, by evidence other than the bond itself, that the money was lent, or repairs made, and materials furnished, to the amount claimed; that they were necessary to enable the vessel to perform the voyage, or for her safety, or could be obtained in no other manner. He should exhibit an account of items, with the usual proof to support them, that the court may judge of their necessity. *Crawford v. the "William Penn,"* 3 Wash. C. C. R., 404.

(141). *May a bottomry-bond be good in part, and bad in part?*

It may, and will be sustained by the court so far as it is good. The "Packet," 3 Mason, 255. The "Tartar," 1 Hagg., 1. The "Nelson," 1 Hagg., 169, 176.

(142). *What constitutes the essential difference between a bottomry and a simple loan?*

The risk of the lender, and his right to repayment only on the safe arrival of the vessel. The "Mary," 1 Paine, 671.

(143). *Is marine interest requisite to a bottomry loan?*

It is; but if not expressed in the bond, it will be presumed to have been included with the principal. 1 Paine, 671. Leland v. "Medora," 2 Wood & M., 107. 2 Hagg. Adm., 57. Atlas Clark v. the "Emancipation," 1 W. Rob., 124.

(144). *When freight is pledged in a bottomry-bond, does it mean the freight of the whole voyage?*

It does, and not merely the freight for that part of the voyage unperformed at the giving of the bond. The "Zephyr," 3 Mason, 341.

(145). *Where money has been advanced on the present credit of the master or owner, and the vessel*

had performed a subsequent voyage, can a hypothecation by the master to secure the debt be supported?

It cannot ; a hypothecation can only be legally made by the actual master. It, therefore, constitutes a conclusive ground of objection to the validity of such instrument, that the master by whom it was given had, before the advances were made and the bond given, resigned his command, and another master succeeded to it. *Walden v. Chamberlain*, 3 Wash., C. C. R., 290.

(146). *If the master has money on board belonging to shippers, is he bound to apply it to the ship's necessities, before borrowing on bottomry?*

He is not ; at least if not equal to the amount of repairs ; but the law invests him with a large discretion on this subject.

COLLISION.

(147). *Is the owner of a brig towed by a steam-boat, over which those in the brig have no control, liable for the damages consequent on a collision?*

He is not liable for the damages consequent on a collision between the brig and another vessel, occasioned by the negligence of the master and crew of the steam-boat.

(148). *What must a libelant, in a case of collision, prove?*

He must prove not only negligence on the part of the respondent, but ordinary care on his own part.

(149). *What is the rule in cases of collision, where a loss is caused by fault of one of the ships only?*

In America no positive enactment has been made: and, therefore, the responsibility of the

guilty ship and its owners stands upon the general maritime law, which enacts a full compensation to be paid out of all the property of the owners of the guilty ship, upon the common principle applied to persons who undertake the conveyance of goods, and they are answerable for the conduct of the agents whom they employ; and the other parties, who suffer the damage, place no trust in these agents, and can exercise no sort of control over their acts.

(150). *What is the rule when both parties are to blame?*

Where there has been want of due diligence or of skill on both sides; in such case, the rule of law is, that the loss must be apportioned between them, as having been occasioned by the fault of both of them.

In the case of the "Scioto" (Davies' Rep., 359), it was held, that when a collision takes place by the fault of one of the vessels, she is responsible for all the damage; but if it happens without fault in either party, or if there was fault and it cannot be ascertained which vessel was in fault, or if both were in fault, then the loss and damage are divided between them in equal shares; the whole damage done to both vessels is put into one mass, in common, and each pays one-half, without regard to the different value of the vessels.

(151). *What is the rule as to a vessel exhibiting a light?*

It seems to be a general rule of the maritime law, that a vessel lying in the common passage-way of a port or river, though she have a right to be there, from necessity or otherwise, is bound to exhibit a light conspicuously in the night time. In reference to the rule requiring lights to be hung out in dark nights, it was said in *Carsly v. White*, 21 Pick, 254, that there was no general and absolute usage on the subject, and that the omission of the light might or might not be a fatal negligence, according to the circumstances. But the Chief Justice of Pennsylvania, in *Simpson v. Hand*, 6 Whart., 324, more justly considered, that the hoisting of a light in a river or harbor at night, amid an active commerce, was a precaution imperiously demanded by prudence, and he did not see how the omission of it could be considered otherwise than a negligence *per se*.

(152). *Is the damage, occasioned to a ship and her cargo by being run foul of accidentally, considered as general or particular average?*

Such a damage is, by the law of the United States, considered as particular average.

(153). *Where there is no proof of negligence in the*

master or crew of the damaged ship, is the insurer liable for the damage?

He is; and he cannot oblige the owner to sue the other party; but, if he indemnify the owner, he becomes vested in his rights, and *he* may sue the party who was willfully the cause of the damage.

(154). *Where damage by collision, to an insured vessel, is caused through negligence or mistake of the master and crew of such vessel, is it at the risk of the insurers?*

The underwriters are liable for a loss occasioned by a risk expressly insured against, though it is a consequence of the negligence or mistake of the master or mariners—supposing the ship to have been provided with a competent master and crew, and that there is no want of good faith and honesty of purpose.

(155). *Are the underwriters on a ship bound to indemnify the assured for the loss to which he may be subject through the liability of his vessel, for damage to other vessels and their cargoes by collision through the fault of the master and mariners of his own ship, and without any fault on the part of the mariners of the other ship?*

The underwriters are only liable for loss which the ship insured by them may have herself sus-

tained in consequence of the collision, and not for the damage other vessels may have sustained.

(156). *What is the general rule of navigation when ships are crossing each other in opposite directions?*

When there is the least doubt of their going clear, the ship on the starboard tack is to persevere in her course, while that on the larboard is to bear up, or keep more away from the wind. The "Jupiter," 3 Hagg., 320.

(157). *What is the duty of a vessel entering a harbor?*

She is bound to keep the most vigilant watch to avoid collision with other vessels in motion or lying at anchor. In the night time, she ought to have her crew on the deck on the look-out. As to what constitutes a good look-out, see the "George," 9 Jur., 670 (4 Notes of cases, 161). 3 Month. Law Mag., 359. *Jameson v. Dunkeld*, 12 Moore, 148.

(158). *What is considered the proper place at which to station a watch at night?*

The pilot-house of a steamer is not considered the proper place; a competent and vigilant look-out, stationed at the forward part of the vessel, and in a position best adapted to descry vessels approaching at the earliest moment, is indispensable,

to exempt the steam-boat from blame in case of accidents in the night time, while navigating waters on which it is accustomed to meet other craft. *St. John v. Paine*, 10 Howard, U. S., 557. *Newton v. Stebbins*, *ib.*, 586.

(159). *What is the rule where vessels anchor in an improper place?*

If a vessel anchors in an improper place, as in the thoroughfare pass of a river, her owner must abide the consequences of a collision, unless other circumstances alter the equity of the case. *Stout v. Foster*, 1 How. U. S., 89. If she anchors there from necessity, she ought not to remain there longer than the necessity continues; if she does, and a collision takes place with a vessel entering the harbor, she will be considered in fault. The "Scioto," *Davies' Rep.* 359. Still, it is the duty of every vessel, seeing another at anchor, whether in a proper or improper place, and whether properly or improperly anchored, to avoid, if practicable and consistent with her own safety, any collision. The "Batavier," 10 Jur., 19 (4 Notes of Cases, 356). See *U. S. v. Mayor*, 5 Missouri, 230.

(160). *Is it a question for a jury to decide, by whose fault the collision happened?*

It is. *Smith v. Coudry*, 1 Howard, U. S., 28.

(161). *What is the recognized rule for sailing vessels generally?*

That those having the wind fair shall give way to those on a wind; that when both are going by the wind, the vessel on the starboard tack shall keep her wind, and the one on the larboard tack bear up, thereby passing each other on the larboard hand; that when both vessels have the wind large or abeam and meet, they shall pass each other in the same way on the larboard hand, to effect which two last-mentioned objects, the helm must be put to port.

(162). *What is the rule of observance for steamers?*

When steam-vessels, on different courses, must unavoidably or necessarily cross so near that by continuing their respective courses there would be a risk of coming in collision, each vessel shall put her helm to port, so as always to pass on the larboard side of each other.

(163). *What is understood by the expression, "giving way?"*

It means not crossing a vessel's bows, but going under her stern. The "*Rose*," 2 W. Rob., 1.

(164). *What amount of compensation is to be made for damage sustained?*

The general principle is, that full compensation

is to be made for the damage and loss that has been suffered. The "Matchless," 10 Jur., 1017.

(165). *Does the rule which prevails in insurance cases, of deducting one-third of the cost-price when new articles are supplied in lieu of old, apply to cases of collision?*

It does not; the claim for indemnity in the former being *ex contractu*, but in the latter *ex delicto*, and, therefore, entitling the party to *restitutio in integrum*, i. e., perfect indemnification for the injury done. The "Gazelle," 2 W. Rob., 279. 8 Jur., 429.

(166). *Must the allowance for loss of freight, detention, etc., be made on the same principle of compensation?*

It must. The gross freight is not to be allowed, but deductions must be made therefrom for the expenses incident to the receipt of freight—such as wages, pilotage, lighterage, tonnage, and other dues.

(167). *Are the owners of the wrong-doing vessel responsible for what is called consequential damages?*

They are responsible not only for the immediate damage, but for all consequential damages, that is, for all damage which may take place that can fairly be attributed exclusively to the act of the original

wrong-doer. The "Countess of Durham," 9 Month. Law Mag. (Notes of Cases), 279. The "Aline," 5 Month. Law Mag. (Notes of Cases), 302.

(168). *What is the law as to costs, in cases of collision?*

That if either party is to blame, that party pays the costs of both; if neither is to blame, each pays his own costs; if both are to blame, the costs fall upon both. The "Washington," 5 Jur., 1067. The "Catharine of Dover," 2 Hagg., 154. The "Batavia," 10 Jur., 20.

SALVAGE

(169). *What is the definition of salvage?*

Salvage is an allowance made for saving a ship or goods, or both, from the dangers of the seas, fire, pirates, or enemies.

"I take it to be very clear," says Mr. Justice Story, "that wherever the service has been rendered in saving property on the sea, or wrecked on the coast of the sea, the service is, in the sense of the maritime law, a salvage service." The schooner "Emulous," 1 Sumner, 210.

"Salvage," said Sir John Nicholl, "in its simple character, is the service which those who recover property from loss or damage at sea render to the owners, with the responsibility of making restitution, and with a lien for their reward." The "Clifton," Lightbody, 3 Hagg. Ad., 117.

(170). *Must the property have been actually saved, to entitle those who claim to the allowance of salvage?*

It must. Intentions, however good, and exer-

tions, however heroic and perilous, are not alone sufficient. *Clark v. brig "Doge,"* 4 Wash. C. C., 651. The "*India*," 1 W. Rob., 406. The "*Mary*," *ib.*, 457. The "*Ranger*," 9 Jurist, 119. The "*Lockwoods*," 9 Jurist, 1017.

(171). *What lien have the salvors for a salvage claim?*

A person who, by his own labor, preserves goods which the owner, or those intrusted with the care of them, have either abandoned in distress at sea, or are unable to protect and secure, is entitled, by the common law of England, to retain the possession of the goods saved until the proper compensation is made to him for his trouble. *Abbott on Shipp.*, 8th ed., 556. *Hartford v. Jones*, 1 Lord Raym., 393. *Baring v. Day*, 8 East., 57. The "*Glasgow Packet*," 8 Jur., 675. The "*Towan*," 8 Jurist, 222. *Clark v. Chamberlain*, 2 Mees. & Welsb., 78.

(172). *What are the general principles as to the allowance of salvage?*

The general principles as to the allowance of salvage are the same in the American as in the English jurisprudence. Where the amount of salvage is not fixed by positive law, it must be determined by the principles of the maritime law, and must necessarily rest in an enlarged discretion,

to be exercised according to the circumstances of each case. It is impossible, therefore, to lay down any positive rule on the subject. *Talbot v. Seaman*, 1 Cranch, 1. Looking to the current of decisions, it will be found that it is rarely less than *one-third*, or more than *one-half*, of the property saved, unless the services have been very inconsiderable, or the amount of the property has been very great. *Abbott on Shipp.*, 8th ed., 555. *Tyson v. Prior*, 1 Gallis., 133. The "*Blaireau*," 2 Cranch, 240. *Cross v. the ship "Bellona"*, Bee, 170. *Stevens v. the ship "Argus"*, Bee, 170. *Warden v. the "Belle Creole"*, 1 Peters' Adm., 31. *Moorehouse v. the "Jefferson"*, 1 Peters' Adm., 46, note. *Taylor v. the "Cato"*, 1 Peters' Adm., 48. *Bond v. the "Cora"*, 1 Peters' Adm., 361. *Weeks v. the "Anna Catharina"*, 1 Peters' Adm., 424.

(173). *What is the general rule of allowance in the case of derelict?*

In cases of derelict, the rule is deemed a flexible one; yet courts of admiralty still adhere to a moiety as a favorite amount, and require some particular circumstances to displace it. The "*Mary Ford*," 3 Dallas, 188. The "*Adventure*," 8 Cranch, 226. The "*Elliotta*," 2 Dodson, 75. *Cross v. the ship "Bellona"*, Bee, 193. *Flinn v. the "Leander"*, Bee, 260. *Bell v. the sloop "Ann"*, 2 Peters' Adm., 279.

Sometimes, though rarely, more than a moiety is given, and sometimes less, having a just regard to the circumstances of each case—to the risk, the labor, the amount of property saved, and the value of that put at hazard by the salvor's service. Abbott on Shipp., 8th ed., 556. The "Rising Sun," Ware, 384. The "Henry," Eubank, 1 Sumner, 400. Bond *v.* brig "Cora," 2 Wash. C. C., 90. The schooner "Emulous," 1 Sumner, 207. The "Elizabeth and Jane," Ware, 35. One-eighth was allowed in the case of the schooner "Emulous." 1 Sumner, 207.

(174). *When is property derelict ?*

Property is derelict in the maritime sense of the word, when it is abandoned without hope of recovery, or without the intention of returning to it. Abbott on Shipp., 556. The "Bee," Ware, 332. The "Elizabeth and Jane," Ware, 35. Tyson *v.* Prior, 1 Gallison, 133. The "Boston," 1 Sumner, 328. The "Emulous," 1 Sumner, 209, 210. The "Henry," Eubank, 1 Sumner, 400.

(175). *Where the master and crew abandon the vessel, she being in a sinking condition, and are picked up by another vessel while yet in sight of the wreck, would the vessel and cargo thus left be considered as derelict ?*

They would. For a case of this kind, see the "Boston," 1 Sumner, 328.

(176). *Is the owner's right of property lost by the abandonment ?*

It is not. The "Bee," Ware, 332. And those who find and undertake to save the goods abandoned are bound, in good faith to consult the interest of the owner, as well as their own. The "Amethyst," Davies' Rep., 20.

(177). *What kind of possession do the salvors gain a right to ?*

The finder, who takes possession of the goods with the intention of saving them, gains a right of possession, which he may maintain against the owner, and a lien on them for salvage. The "Bee," Ware, 332. The "Amethyst," Davies' R., 20. The nature of the possession here spoken of is an actual corporal prehension of the property. The "Amethyst," Davies, 23.

(178). *If the owner temporarily leave the goods for the purpose of obtaining aid, is his exclusive right of possession lost thereby ?*

It is not. The "Bee," Ware, 332.

(179). *If salvors temporarily leave the goods for the same purpose, is their right lost ?*

The right of possession, having become perfect in salvors, is not lost to them by temporarily leav-

ing the wreck, without the intention of ultimately abandoning it, but with the purpose of returning and resuming the actual possession. The "Amethyst," Davies' Rep., 24.

(180). *If salvors, in effecting salvage service, themselves fall into distress, and are relieved by other salvors, do they lose their original right to salvage?*

They do not; but the second salvors partake in the salvage according to their merit. Second salvors cannot lawfully make it a condition of giving assistance, that the original salvors shall abandon all claims to salvage. The ship "Henry," Eubank, 1 Sumner, 400. If, however, the first set of salvors have not sufficient force to effect the salvage without great risk of the loss of the goods, they cannot, consistently with the good faith they owe to the owners, refuse the assistance of others, who offer their aid, and who may thus become entitled to a share in the reward. The "Amethyst," Davies' Rep., 20.

But, if one set of persons have taken possession of a vessel abandoned at sea, and are endeavoring to bring it into the port and save it, another set have no right to interfere with them and become participators in the salvage, unless it appears that the first would not have been able to effect the purpose without the aid of others. Abbott on Shipp., 8th ed., 557. The "Maria," Kilstrom, 1

Edw., 175. The "Charlotta," Nesser, 2 Hagg. Ad. Rep., 361. The "Eugene," Browne, 3 Hagg. Ad., 156. The "Effort," 3 Hagg. Ad., 165. The "Blendenhall," 1 Dodson, 417.

(181). *How may a salvage claim be recovered?*

If the parties cannot agree upon the amount of compensation, it may be ascertained by a jury in an action brought by the salvor against the proprietor of the goods; or the proprietor may tender to the salvor such sum of money as he thinks sufficient, and upon refusal to deliver the goods, bring an action (of detinue or trover) against the salvor; and if the jury think the sum tendered sufficient, he will recover his goods or their value and the cost of his suit. Abbott on Shipp., 556.

(182). *What are the ingredients of a salvage service?*

First, enterprise in the salvors in going out in tempestuous weather to assist a vessel in distress, risking their own lives to save their fellow-creatures, and to rescue the property of their fellow-subjects. Secondly, the degree of danger and distress from which the property is rescued—whether it was in imminent peril, and almost certainly lost if not at the time rescued and preserved. Thirdly, the degree of labor and skill which the salvors incur and display, and the time

occupied. Lastly, the value. When all these circumstances concur, a large and liberal reward ought to be given; but where none, or scarcely any, take place, the compensation can hardly be denominated a salvage compensation; it is little more than a remuneration *pro opere et labore*. See the observations of Sir John Nicholl, in the case of the "Hector," Freeman, 3 Hagg. Ad., 90; and the "Industry," Davies, 3 Hagg. Ad., 203.

When the property is very large, a small proportion may be sufficient for that purpose. The question will always revolve itself into a consideration of the circumstances attending the particular case. Abbott on Shipp., 8th ed., 558. The "Salacia," Garland, 2 Hagg. Ad., 262.

(183). *Is a passenger entitled to make a claim for the ordinary assistance he may be enabled to offer to a vessel in distress?*

He is not; it being the duty as well as the interest of all persons on board, of every description, to contribute their aid on such an occasion. A passenger, however, is not bound to remain on board the ship in the hour of danger, but may quit it if he has an opportunity to do so; much less is he required to take upon himself any responsibility as to the conduct of the ship. Abbott on Shipp., 8th ed., 560. The "Branston," Wilson, 2 Hagg. Ad., 3.

(184). *May passengers by extraordinary service entitle themselves to salvage?*

They may. The "Two Friends," 1 Rob., 271, 284. *Bond v. brig "Cora,"* 2 Wash. C. C., 80. *Clayton v. the "Harmony,"* 1 Peters' Adm., 70.

(185). *When may a seaman be entitled to salvage?*

Persons belonging to a ship's crew, though ordinarily not entitled to salvage, may become so by services beyond the line of their duty; for instance, where the ship is abandoned at sea, and one seaman remains on board, and aids in saving her, he is entitled to salvage. *Mason v. the "Blaireau,"* 2 Cranch, 240. *Hobart v. Drogan,* 10 Peters, 108. 3 Kent (5th ed.), 248. *Taylor v. the "Cato,"* 1 Peters, Adm., 48. *Clayton v. the "Harmony,"* 1 Peters' Adm., 79.

(186). *Where two vessels come up together to render assistance to a ship in distress, are all the persons composing the crews entitled to be considered as salvors?*

They are, even though a part only are actually employed. The "Mountaineer," 2 W. Rob., 7.

(187). *If the master of a vessel in distress, contracts with the master of another vessel for assistance, for a sum certain, will such an agreement be held binding?*

It will, except, perhaps, in cases of inevitable

accident, or occurrences of a nature so improbable that neither party can be supposed to have foreseen or contemplated them at the time of entering into the agreement. Abbott on Shipp., 561. The "Betsey," 7 Jurist, 755. The "Emulous," 1 Sumner, 210, 212.

(188). *Where a vessel, in the course of her voyage, falls in with a wreck, is the master authorized, by the usages and customs of the sea, to employ his own vessel and crew in saving her?*

He is. The "Centurion," Ware, 477. And in such case, all the crew, who are ready and willing to engage in the service, are entitled to share in the reward, although they may not have gone on board the wreck. *Ib.* See, also, the case of the American ship "Baltimore," 2 Dods. Ad., 132, cited in Abbott on Shipp., 8th ed., 564.

(189). *In the distribution of salvage, what proportion ought to be allowed to the owner of the salvor ship?*

Under ordinary circumstances he ought to be allowed one-third of the salvage. In cases of extraordinary merit, or extraordinary peril to the ship, he may found a claim to higher salvage. The "Henry," Eubank, 1 Sumner, 400. The "Blair-eau," 2 Cranch, 240.

(190). *What is the rule with respect to the parties liable to pay salvage, and the interest in respect of which it is payable?*

The rule is, that the property actually benefited is alone chargeable with the salvage recovered.

(191). *What is the rule with regard to freight?*

If, at the time of the salvage service, the earning of the freight has commenced, and it be afterwards actually earned, it is liable to pay salvage as well as the ship and cargo. The "*Dorothy*," Foster, 6 Rob. Ad., 88. The "*Progress*," Edw. Ad., 210. Abbott on Shipp., 8th ed., 572.

(192). *Is the clothing of the master and crew, which is left on board a vessel when they abandon her, included in the mass of property on which salvage is allowed?*

It is not, but is restored free of charge. The "*Rising Sun*," Ware, 378. So, also, money found on the person of a passenger drowned on board a wrecked vessel. The "*Amethyst*," Davies' Rep., 20, 29.

(193). *Would the court allow salvage for saving from a wreck bills of exchange, or other papers, the evidence of a debt, or of title to property?*

It would not. The "*Emblem*," Davies' Rep., 61.

(194). *When a well-founded claim of salvage has been entered in court, what is the proper course to be pursued by the defendants, in order to save the expense of further proceedings?*

It is to tender, in the first stage of the cause, by acts of court, and not personally and verbally, to the claimants, a specific sum for salvage, accompanied by an offer to pay the costs incurred. The court will then consider of the sufficiency of the sum tendered, and if it shall be thought sufficient, it will make the party, who refuses the offer, liable not only to his own costs, but also to the costs of the other side, if it shall appear that the proceedings have been vexatiously pursued. *Abbott on Shipp.*, 573. The "*Vrouw Margaretha*," *Jacobs*, 4 Rob. Ad., 103. See, also, the "*Eleanora Charlotte*," *Osterman*, and the "*John and Thomas Baxter*," 1 Hagg. Ad., 156, 157.

(195). *Are salvors admitted as witnesses?*

They are, from necessity. The "*Elizabeth and Jane*," *Ware*, 35. But only as to facts occurring at the time of the salvage service. The schooner "*Boston*," 1 Sumner, 328. The ship "*Henry*," *Eubank*, 1 Sumner, 400.

(196). *Where expenses are incurred for salvage of a wrecked ship and cargo, is the proportion belonging*

to the ship to be included with the repairs, in making the estimate of fifty per cent.?

It is. *Sewall v. United States Ins. Co.*, 11 Pick. R., 90. *Bradie v. Maryland Ins. Co.*, 12 Peters' Sup. Ct. R., 378. The principle is, that the expense of getting off a stranded ship, and removing a damaged ship to a port more convenient for making repairs, are equivalent, in respect to abandonment, to expense for repairs. *Phillips on Ins.*, 1551.

(197). *What is understood by a salvage loss of goods, and how is it adjusted?*

A salvage loss is so denominated, because the insurer, as in a total loss, pays the whole value of the subject, and is entitled to the salvage, or net proceeds of the sale of it, after the deduction of all expenses. *Phillips on Ins.*, 1480.

As to adjustment of salvage loss, see *supra* No. 68.

(198). *Where the salvage is high, the other expenses are great, and the object of the voyage is defeated, may the insured abandon to the insurer, and call upon him to contribute for a total loss?*

He may. (See *Abandonment*.)

MASTER AND OWNERS.

(200). *Is the master of a vessel considered as the general agent of the owners, and how far can they be bound by his acts?*

He is not. His authority is limited to the objects and purposes of the voyage. *Mervin v. Shailer*, 12 Comm., 489.

He is not the agent of the owners to settle any claims against the vessel, or against them, except such as accrue during the time he is master. *Kelly v. Merrill*, 14 Maine, 228.

The ship and freight are, by the marine law, bound, *in specie*, to the performance of every contract made by the master within the scope of his authority. 3 Kent, 5th ed., 162, 218.

The incidental powers of the master are restricted to those which belong to the usual employment or business of the ship. *Peters. v. Ballister*, 3 Pick, 495.

The master of a vessel has no power to bind the

owners, beyond the authority given to him by them. *Pope v. Nickerson*, 3 Story C. C., 465.

(201). *Has the master of a ship, under his general authority, a right to charter the ship in a foreign country, if his owner has no agent there?*

He has. The master of a ship, when abroad, is the agent of the owners, and has power to make contracts relative to receiving goods on freight, the ship being a general one. *Ward v. Green*, 6 Cowen, 173.

(202). *Has the master power to purchase a cargo on the owners' account?*

He has not. *Hewett v. Buck*, 17 Maine, 153. But if the owners of a vessel have permitted the master to purchase on their account, or have ratified such acts when known to them, and thus held him out as their agent authorized to purchase, they will be bound by his acts. *Ibid.*

(203). *Can the master of a vessel, merely in his character of master, bind the owners by a charter-party under seal, so as to subject them to an action of covenant?*

He cannot. *Pickering v. Holt*, 6 Greenl., 160.

(204). *What is the master's authority as to the purchase of supplies for the ship?*

Supplies ordered by the master, whether in a

home port or in a foreign port, will generally be presumed to be chargeable to him, as well as to the owner. *Leonard v. Huntingdon*, 15 John's, 298. *James v. Bixby*, 11 Mass., 34.

If the supplies are ordered by the owners, the master is never liable. *Farmer v. Davis*, 1 Term. R., 108.

A master may charge the owners for the necessary supplies for the usual employment of the vessel, but not for superfluities or luxuries. *Pratt v. Tunno*, 2 Brevard, 449.

(205). *If goods taken on board are lost or injured by any negligence or unskillfulness of the master or crew, or stolen by others, who are responsible?*

The master, as well as the owners, is personally responsible, both being regarded, by the law of the United States, as common carriers. *Elliott v. Russell*, 10 John's, 1.

(206). *If the master himself hires the vessel under an agreement to victual and man her, and employs her in such voyages as he thinks best, is the owner in any way responsible for supplies?*

The master thus having the entire possession, command, and navigation of the vessel, the relation of principal and agent between the master and owners ceases to exist, and the master thereby becomes the owner *pro hac vice*, during such time

as the contract exists ; and, therefore, he, and not the general owners, is responsible for supplies. Abbott on Shipp., 133, n.

(207). *What is the master's authority, as to procuring supplies in a foreign port ?*

The master, in this respect, is to be considered as the general agent of the owner, and in such capacity may procure what repairs are necessary.

(208). *What may properly be considered as necessary repairs, and for which the master may lawfully bind the owner of the ship ?*

In the sense of the law, *necessary repairs* are such as are reasonably fit and proper for the ship under the circumstances, and not merely such as are absolutely indispensable for the safety of the ship, or the accomplishment of the voyage. The ship "Fortitude," 3 Sumner, 233.

(209). *If bills drawn on the owners for proper repairs are dishonored, will an action for money laid out and expended lie against them ?*

It will. 2 Caine, 77.

(210). *If the master expend money of his own in procuring repairs or supplies, has he not a right to call upon the owners to repay him ?*

He has ; and has a right to detain the freight

until he is fully paid his expenses and disbursements. 2 Caine, 77. Lane v. Penniman, 4 Mass., 91.

(211). *Can a master alter a contract made by the owners?*

If the owners themselves have made a spécial contract for the employment of their ship, the master cannot, by the general and implied authority of his character as master only, annul such a contract and substitute another for it with the other contracting party. Abbott on Shipp., 8th ed., 130. Walter v. Brewer, 11 Mass., 99. Ward v. Green, 6 Cowen, 173. Peters v. Ballister, 3 Pick., 495.

(212). *Has the master authority to pledge the freight to raise money for his own private purposes?*

He has not; for it is not within the ordinary authority conferred to him. Keith v. Murdoch, 2 Wash. C. C., 297.

(213). *Are not the owners not only liable for the contracts of the master, but also for his torts, when done within the scope of his employment?*

The master of a vessel is bound to his owners for the exercise of reasonable skill and care in the management of his vessel; and he and the owners are bound, in like manner, to every one who is

affected by his acts in such management. Abbott on Shipp., 8th ed., 131, n.

(214). *If the master injures another vessel from his want of care and skill, is the owner liable for the injury as well as the master?*

He is. *Stone v. Ketland*, 1 Wash. C. C., 142.

In cases of this nature, occurring on the high seas, there is a familiar remedy in admiralty, technically called a cause of *collision*, which lies against the owner, and also against the ship itself, for the injury done, holding her responsible on account of the liability of the owner. Abbott on Shipp., 8th ed., 131, n.

(215). *Is the master bound to devote his whole time to the ship?*

He is bound to employ his whole time and attention in the service of his employers, and the performance of the duties of his particular character, and is not at liberty to enter into any engagement for his own benefit that may occupy any portion of his time in other concerns. *Matthewson v. Clark*, 6 Howard (U. S.), 122. *Thompson v. Havilock*, 1 Camp., 527.

(216). *What is the master's duty, as to the manner of taking cargo on board; and what his liability where it is improperly placed on deck?*

The cargo must be taken on board with care and

skill, and be properly stowed ; and the contract, by the bill of lading, imports that the goods are to be safely stowed under deck ; and if they are stowed on deck without the consent of the shipper, or without the sanction of custom, they are at the risk of the ship-owners or master, and he and the owners of the vessel would not be protected from liability for their loss by the exception, in the bill of lading, of the *dangers of the seas*, unless it is made to appear that the loss must have happened the same if the goods had been stowed safely under deck. The "Paragon," Ware, 322. The "Rebecca," Ware, 188. The "Waldo," Davies' Rep., 161. The schooner "Reeside," 2 Sumner, 567.

(217). *Will a bill of lading of lumber, shipped on board a vessel in the usual form, and what is called a clean bill of lading, bind the person so undertaking to carry it under deck ?*

It will, if there is no agreement, express or implied, to the contrary. *Sproat v. Donnell*, 26 Maine, 188.

(218). *Are goods laden on deck protected by a policy on "cargo and freight" in general terms ?*

They are not. 1 Phill. on Ins., 486, 487. 1 Arnold Ins. (Am. ed., 1850), 69.

(219). *If goods were shipped under the common*

bill of lading, at an underdeck freight, but were carried on deck, and finally delivered without damage, what freight would be allowed?

In *Vernard v. Hudson*, 3 Sumner, 405, it was held that the ship-owner was only entitled to a deck freight.

(220). *Has a wharfinger a lien on the vessel for wharfage?*

He has. The "Phebe," Ware, 354.

(221). *If, by reason of damage done to the ship, or through want of necessary materials, she cannot be repaired at all, or without very great loss of time, is the master at liberty to procure another ship to transport the cargo to the place of destination?*

He is; and if the master, in such a case of necessity, offers to procure another vessel to carry on the cargo, and the shipper will not consent, the master will then be entitled to his full freight. 3 Kent, 5th ed., 210. Abbott on Shipp., 8th ed., 365.

(222). *Is it the duty of the master, in such a case, to procure another vessel and send on the cargo?*

Mr. Chancellor Kent has remarked, that it is the duty of the master, from his character of agent of the owner of the cargo, which is cast on him from

the necessity of the case, to act in the port of necessity for the best interests of all concerned ; and he has powers and discretion adequate to the trust, and requisite for the safe delivery of the cargo at the port of destination. If there be another vessel in the same or a contiguous port which can be had, the duty is clear and imperative upon the master to hire it ; but still the master is to exercise a sound discretion adapted to the case. 3 Kent, 5th ed., 213.

The duty of the master to procure another vessel is only imperative when another vessel can be had in the same or a contiguous port, or at or within a reasonable distance, and there can be no difficulties in the way of a safe transshipment of the cargo. *Saltus v. Ocean Ins. Co.*, 12 John's, 107.

(223). *If he hires another vessel for the completion of the voyage, may he charge the cargo with the increased freight arising from the hire of the new ship ?*

He may. This is fully established by decisions in New York. *Munford v. Commercial Ins. Co.*, 5 John's, 262; *Searle v. Scovill*, 4 John's, ch. 218.

(224). *What is the proper rule for ascertaining such extra or increased freight ?*

It seems to be, to determine the difference between the amount of freight under the original

charter-party, and the rateable freight for the goods saved, to the port of necessity, added to the freight of the new ship hired to carry on the goods. *Ship-ton v. Thornton*, 9 Adol. & Ellis, 314.

(225). *Is the extra freight for the renewed voyage to be considered as a lien on the cargo?*

It is. *Ibid.*

(226). *Has the shipper a right to demand the cargo at an intermediate port, without paying the full freight, whether it be damaged or no?*

He has not. *Jordan v. Warren Ins. Co.*, 1 Story C. C., 342. But if the master refuses to carry it to its destination, the owner may demand or take it without paying any freight. *Coffin v. Storer*, 5 Mass., 252. *Armroyd v. Union Ins. Co.*, 3 Binn., 437. *Treadwell v. Union Ins. Co.*, 6 Cowen, 270, or, unless the cargo is of a perishable nature, and will not endure the delay. *The "Isabella,"* 4 Rob. Adm., 77.

(227). *Where a cargo is so much injured that it will endanger the safety of the ship and cargo, or it will become utterly worthless, is it the duty of the master to land and sell the cargo at the place where the necessity arises?*

It is, even though it might have been carried to

the port of destination, and then landed. *Jordan v. Warren Ins. Co.*, 1 Story C. C., 342.

(228). *In cases of necessity or calamity during the voyage, is the master, by law, created agent for the benefit of all concerned?*

He is ; and his acts, done under such circumstances, in the exercise of a sound discretion, are binding upon all the parties in interest in the voyage. *Jordan v. Warren Ins. Co.*, 1 Story C. C., 342.

(229). *What is the meaning of the rule so frequently inculcated, that the master, in case of a misfortune to his ship, must do his "best for the benefit of all concerned?"*

A ship driven into port by sea-damage, in itself but trifling, is discovered, on survey, to be in a state of general and perilous decay. The master is satisfied of her inability to complete her voyage without extensive repairs, and that the cost of them must be such as to create a grave doubt if an immediate sale would not be more for the interest of her owners. In resolving that doubt, if he mean fairly, and reason rightly, his knowledge that the ship is insured will not influence his judgment.

Fraudulent statements, or suppressions in protests and surveys, followed by a hasty sale, or by extravagant repairs, may seriously affect the inter-

costs, but cannot extend the legal liability of the underwriters. His duty to them is no other than the duty of an honest servant of an honest employer to those with whom that employer has contracted. Whether he proceeds to a sale, or gives orders for repairs, he should carefully ascertain the amount of damage resulting from recent perils of the sea, and of damage attributable to other and older causes, preserving, for the satisfaction of all whose interests may be affected by his acts, the evidence which will enable them also to distinguish the one from the other, and thereby adjust their respective losses. It is in this sense only that the master can be said to discharge his duty to all concerned, at least if the insurers are included amongst them. Abbott on Shipp. (8th ed.), 17, n. Weskitt on Insurance, Title Repairs.

(230). *Is not the disposal of the cargo, by the master, a matter that requires the utmost caution on his part?*

It is; and he should always bear in mind that it is his duty to convey it to the place of destination. This is the purpose for which he has been intrusted with it, and this purpose he is bound to accomplish, by every reasonable and practicable method. Every act, that is not properly and strictly in furtherance of this duty, is an act for which both he and his owners may be made responsible. Abbott on Shipp., 8th ed., 365.

(231). *What is the master to do with respect to the cargo, if, by any disaster happening in the course of his voyage, he is unable to carry the goods to the place of destination, or to deliver them there?*

To this, as a general question, no answer can be given, as every case must depend upon its own peculiar circumstances; as a general thing it may be said, he is to do that which a wise and prudent man will think most conducive to the benefit of all concerned. In so doing he may expect to be safe, because the merchant will not have reason to be dissatisfied. Some regard may be allowed to the interest of the ship and of its owners; but the interest of the cargo must not be sacrificed to it. Transhipment for the place of destination, if it be practicable, is the first object, because that is in furtherance of the original purpose; the merchant should be consulted if possible. A sale is the last thing that the master should think of, because it can only be justified by that necessity which supercedes all human laws. If he sells without necessity, his owners, as well as himself, will be answerable to the merchant. He certainly has no right to sell goods which are in good condition, and are not perishable, without the authority of the owners, to whom he is bound to give immediate information. If he sells contrary to his duty, he is liable to an action for damages. In *Scull v. Briddle*, 2 Wash. C. C., 150, the power of the master to sell, in cases

of necessity, where that necessity arose abroad, was admitted ; but it was denied to exist in the country where the owner lives. Abbott on Shipp., 8th ed., 368. Dodge v. Union Ins. Co., 17 Mass., 478. Fontaine v. Phoenix Ins. Co., 11 John's, 293.

(232). *If the master, being compelled to take refuge in a foreign port during the course of his voyage, has occasion for money for the repairs of the ship, or other expenses necessary to enable him to prosecute and complete the voyage, and cannot otherwise obtain it, may he either hypothecate the whole cargo or sell a part of it for this purpose?*

He may. If, however, the repairs of the ship produce no benefit or prospect of benefit to the cargo, the master can neither sell nor hypothecate ; but, though the prospect of benefit may be more direct, and more immediate to the ship, it may still be for the preservation and conveyance of the cargo ; and when it is so, it is justly to be considered as done for the common benefit of both ship and cargo. The "Packet," 3 Mason, 255. The "Zephyr," 3 Mason, 341.

(233). *Where, in the course of the voyage, the master sells a part of the cargo to pay for repairs, do the ship-owners become indebted for the sum so applied?*

They do ; and the owners of the cargo have also

a lien on the vessel. *Pope v. Nickerson*, 3 Story C. C., 465, 491, 492. In the case of the ship "Packet," 3 Mason, 255, it was held that, if the property of a shipper be taken and sold to relieve the ship's necessities, and to enable her to perform the voyage, the party whose property is so taken has a right of contribution over and against the other owners of the cargo, and is not confined to his remedy against the ship-owners.

(234). *What is the law in the United States as to the sale of the ship by the master?*

A master may be justified in selling his ship, when he finds her in such a condition, from any cause, or combination of causes—as from recent damage, imperfect construction, bad material, old age and decay—that she cannot safely proceed on her voyage without repairs, which he has not the means of obtaining, or only at a cost exceeding the amount which, looking at her probable value after their completion, a prudent and discreet owner would think right to incur. *Robinson v. Commonwealth Ins. Co.*, 3 Sumner, 226, 227. *Hall v. Franklin Ins. Co.*, 9 Pick., 466, 477, 478.

(235). *In sailing down rivers, out of harbors, or through roads, etc., where, either by usage or the laws of the country, a pilot is required, must one be taken on board?*

A vessel is not sea-worthy within the implied

warranty, if she proceeds without a pilot in navigating a river where it is the custom to take on board a licensed pilot. If there be no such custom, the captain, mate, or other person possessing the requisite skill may act as pilot.

The duty of the master in reference to a pilot was fully pointed out in the case of *Bolton v. Amer. Ins. Co.*, tried before Jones, C. J., in the Sup. Court of New York, in Nov., 1835, cited in Note (a) to 3 Kent (5th ed.), 176.

(236). *Is the master of a vessel considered answerable for any error of judgment ; and what is his duty to his employers ?*

Reasonable care, attention, prudence, and fidelity are expected of him ; and if any misfortune or mischief ensue from want of them, either in himself or his mariners, he is responsible therefor in a civil action ; and if the owners are obliged to pay damages on this account they may recover the same from the master. *Atkyns v. Burrows*, 1 Peters' Adm., 245. *Stone v. Ketland*, 1 Wash. C. C., 142.

The great trust reposed in the master by the owners, and the great authority which the law has invested in him, require on his part, and for his sake, no less than for the interest of his employers, the utmost fidelity and attention. For, if any injury or loss happen to the ship or cargo by reason

of his negligence or misconduct, he is personally responsible for it; and, although the merchant may elect to sue the owners, they will have a remedy against him, to make good the damages which they may be compelled to pay. So, if he make any particular engagement or warranty without a sufficient authority from his owners, although the owners may be answerable to the persons with whom he contracts, by reason of the general power belonging to his situation and character, he is in like manner responsible to the owners for the injury sustained by them in consequence of his acting beyond, or in violation of, the particular authority given to him. Abbott on Shipp., 8th ed., part 2, chap. 4.

(237). *May the owners of a ship dismiss the master at their pleasure?*

Upon a general retainer for no particular voyage, they may dismiss him without any cause assigned, exactly as they may any other agent. But, if he has been retained for any particular voyage, and has signed bills of lading, etc., he is certainly entitled to compensation, if he thereby incurs any loss, or sustains any damages, unless the dismissal be for a sufficient cause. *Montgomery v. Wharton*, 1 Peters' Adm., 397. 3 Kent (5th ed.), 161, 162.

(238). *If a ship, bound on a foreign voyage, after the voyage is begun, and before leaving the land, is*

four, too leaky, or otherwise unfit, to proceed on the voyage, may the officers and crew refuse to go in her?

The mate, or first officer, and a majority of the crew may require the ship to stop at the first convenient port, and have the ship surveyed; and, if necessary, fully equipped and repaired, under the direction of the district judge, or a justice of the peace. 1 U. States Statutes at Large, 131, 132.

(239). *What is the rule as to providing suitable medicines for the health of the seamen?*

Every ship of one hundred and fifty tons burden, or upwards, navigated by ten or more persons, and bound on a voyage without the limits of the United States, and every ship of the burden of seventy-five tons, or upwards, navigated with six or more persons in the whole, and bound from the United States to any port in the West Indies, is required to have a chest of medicines, put up by some apothecary of known reputation, and accompanied by directions for administering the same; and the same medicine-chests are to be examined at least once a year, and supplied with fresh medicines. In default of such medicine-chest, the master is made liable to provide for all such advice, medicine, or attendance of physicians, as any of the crew may, in case of sickness, require at any port, without any

deduction from the wages of such seamen. 1 U. States Statutes at Large, p. 131, 134.

(240). *Is not the master of a vessel, employed to carry goods beyond sea, answerable as a common carrier?*

He is, in consideration of freight. 2 Kent, 3d ed., 600.

(241). *Where the vessel is let to the master, on shares, reserving no control over her, is the owner liable?*

He is not. *Thompson v. Snow*, 4 Greenl., Me. Rep., 255.

(242). *What does the phrase "perils of the sea" import?*

Every accident happening by the violence of wind or waves, by thunder and lightning, by driving against rocks, or by stranding of the ship, may be considered as a peril of the sea. Park. on Ins., 61.

(243). *Is the underwriter answerable for all such losses?*

He is.

(244). *Is a loss, occasioned by rats at sea, considered as a peril of the sea?*

It is.

(245). *Is loss by worms?*

No. *Martin v. Salem Ins. Co.*, March T., 2 Mass. Rep., 429.

(246). *What is the law in the United States with respect to ship's articles?*

That, in all voyages to foreign ports, and in coasting voyages, other than to an adjoining State, there shall be an agreement, in writing or in print, with every seaman on board the ship (excepting only apprentices and servants of the master or owner), declaring the voyage or voyages, term or terms of time, for which such seamen are hired.

The shipping-articles must declare explicitly the ports at which the voyage is to commence and terminate. *Magée v. master and owner of the ship "Moss," Gilpin*, 219.

The time when the seamen shall render themselves on board is to be entered at the foot of such agreement; and if any seaman does not so render himself on board, or deserts, so that the ship proceeds to sea without him, he forfeits a sum equal to his advance wages, over and besides such advance

A justice of the peace may, upon complaint of the master, issue a warrant to apprehend a deserting seaman, and commit him to jail, there to remain until the ship is ready to sail on her voyage, and then cause him to be delivered to the master. 1 U. States Statutes at Large, p. 131.

(247). *Is the owner of a vessel, although his name is not stated in the shipping-articles, liable for the wages of the seamen?*

He is. *Bronde v. Haven*, 1 Gilpin, 592.

(248). *Is a seaman's claim for wages preferred in admiralty to all other charges on the ship?*

In proceedings against the ship, in specie, if the value thereof be insufficient to discharge all the claims upon it, the seaman's claim for his wages is preferred before all other charges. *Abbott on Shipp.*, 8th ed., 662.

The lien for seamen's wages attaches to the ship and freight, and their proceeds, into whosoever hands they may come, and takes priority of all other claims. *Brown v. Lull*, 2 Sumner, 443.

The merchandise is bound to the ship for freight, and the freight to the seamen for their wages. *Skolefield v. Potter*, *Davies' Rep.*, 392.

When the owners of the ship are also owners of the cargo, the cargo owes freight to the ship, and this freight is pledged for wages. *Ibid.*

(249). *How may this lien be enforced against the freight?*

By seizing it in the hands of the master, or in the hands of the merchant, before it is paid. *Poland v. brig "Spartan," Ware*, 134

(250). *Is the right of the seamen to sue the master, the owner, or the ship, recognized in our courts?*

It is. *Aspinwall v. Bartlett*, 8 Mass., 483. But the right of seamen to sue in the admiralty has never been considered in our courts as a matter of indulgence, but of absolute right in point of jurisdiction. *Willard v. Dorr*, 3 Mason, 91.

Seamen may not only sue *in rem.*, but *in personam*, in the admiralty against the owner and master for their wages. *De Lovio v. Boit*, 2 Gallis., 398.

(251). *If the master has not made the original contract, but merely succeeds to the place of the master in the course of the voyage, by reason of the death or any other cause of removal of the former master, is he liable for the wages antecedently earned?*

The master's personal liability to the seamen for wages, is a liability founded on contract; therefore, he is only liable for the wages earned while he is master. *Wysham v. Rossen*, 11 John's, 72. *Mayo v. Harding*, 6 Mass., 300.

(252). *Is the owner only liable for wages earned while he is actually owner?*

If the owner has chartered the vessel for the voyage, and the charterer hires the crew, and is to pay the master and crew and victual the ship, he,

and not the original owner, is liable for the wages. *Aspinwall v. Bartlett*, 8 Mass., 483.

(253). *When a vessel is let to the master, to be employed by him, and he is to pay the owners a certain portion of her earnings, will the owners be liable to the seamen for their wages?*

They will, though by the agreement the master is to have the entire control of the vessel, to victual and man her, and furnish supplies at his own expense, unless, at the time of shipping, this contract is made known to them, and they are informed that they are to look to the master as the only owner. The money that is paid over by the master is paid as freight; and the owners, as receivers, and having an interest in the freight, are liable to the seamen for wages. *Skolefield v. Potter*, Davies' Rep., 392. 2 Law Rep. (N. S.), 115. *Webb v. Pierce*, 1 Curtis C. C., 104.

(254). *When a ship is abandoned to the underwriters in the course of the voyage, do they become personally liable to the seamen for their wages?*

They are not liable for the wages earned antecedently to the period to which the abandonment, if effectual, relates. *Richardson v. the Marine F. and M. Ins. Co.*, 6 Mass., 102. But as to wages subsequently earned, the underwriters are the owners of the ship, and as such would seem liable therefor.

Hammond v. Essex Fire and M. Ins. Co., 4 Mason, 196.

(255). *Does an abandonment change the character of the master?*

If made on good grounds, it relates back to the time of the loss, and makes the master the agent of the underwriters from that period. *Ibid.*

(256). *Does the mate, succeeding to the command of the ship upon the death of the master, thereby lose his character as mate, as far as wages are concerned?*

He does not, but may sue in the admiralty for his wages. The brig "George," 1 Sumner, 151.

(257). *What remedy has the master for recovery of wages?*

The master has no lien upon the ship for wages: he can only sue the owners personally in a court of common law.

In the case of Willard v. Dorr, 3 Mason, 91, the jurisdiction of the admiralty to maintain a suit *in personam* in favor of the master for his wages was expressly affirmed. See also the "George," 1 Sumner, 151. Hammond v. Essex Fire and M. Ins. Co., 4 Mason, 196.

It was at the same time admitted, that he had no remedy *in rem*. The same doctrine has been as-

serted in the District Court of New York, by the late Judge Van Ness. See also the "Grand Turk," 1 Paine C. C., 73. The master has no remedy *in rem.*, because it has been ruled that he has no lien; and the suit *in rem.* for wages lies only where such lien exists for wages. The ship "Packet," 3 Mason, 255. But courts of admiralty will allow payments to master for advances and necessary disbursements abroad, out of remnants and surplusages arising from the proceeds of a sale of the ship in their hands, because they partake of the nature of liens. *Gardner v. the ship "Jersey,"* 1 Peters' Adm., 223.

As the master generally receives the freight and earnings of the ship, and may pay himself out of the money in his hands, he has not often occasion for the aid of a court of justice to obtain his right. *Abbott on Shipp.*, 8th ed., 655.

(258). *What is understood by ship's husband, and what is his character and duty?*

It is usual for the several part-owners to appoint a person—frequently one of their own number—to be the manager of their joint concern—their general agent in the use and employment of the vessel—under the name of ship's husband. His duties and powers as such are often defined and limited by the terms of a special agreement for that purpose between him and his employers or co-owners. Where no such agreement has been made, he is to exercise

an impartial judgment in the employment of tradesmen and the appointment of officers, and be careful that his choice in the selection of a master be not biased by any private pecuniary transaction. He is to see that the ship is properly repaired, equipped, and manned; to procure freights or charter-parties; adjust freight and averages; disburse and receive moneys, and keep and make up the accounts as between all parties interested. His acts for these purposes are considered to be the acts of all the part-owners, who are liable on all contracts entered into by him for the conduct of their common concern—the employment of the ship. Abbott on Ship., 8th ed., 106.

(259). *What circumstances of distress or damage will constitute such a case of urgent necessity as may enable a master to convey to a purchaser an indefeasible title to his ship?*

A learned writer has cited with approval the rule suggested by Mr. Justice Richardson, in the case of *Reid v. Darby*. "So long as the subject matter, which the master is intrusted to navigate, continues as a ship, and capable of navigation with such repairs as are to be had, he cannot sell it; he can only sell the materials when it is broken up or become a mere wreck." Cases may occur in which this rule would be considered too strict; but it is one to which prudent purchasers will find it their interest to attend. Abbott on Shipp., 19.

"The master," said Mr. Baron Parke, delivering the judgment of the Court of Exchequer, in *Hunter v. Parker*, 7 M. and W., 322, "has, by virtue of his employment, not merely those powers which are necessary for the navigation of the ship and the conduct of the adventure to a safe termination, but also a power, when such termination becomes hopeless, and no prospect remains of bringing the vessel home, to do the best for all concerned, and, therefore, to dispose of her for their benefit. It is a case of necessity, when nothing better can be done for the master's employers.

The master of a vessel has an authority to sell only in cases of extreme necessity; not, indeed, of physical necessity, but of moral necessity. By moral necessity is to be understood, not an overwhelming and irresistible calamity or force, but a strong, and urgent, and, if one may so say, a vehement exigency, which justifies and requires the sale to be made, as a proper matter of duty to the owner, to prevent a greater sacrifice, or a total ruin of the property. In short, the case of a moral necessity cannot, perhaps, be better put, than to say, that it is such an act of sale as, under like circumstances, a considerate owner, who was uninsured, would adopt for his own true interest, and that of all concerned in the voyage. *Abbott on Shipp.* (8th ed.), 19. *Robinson v. Commonwealth Ins. Co.*, 3 Sumner, 226, 227. *Winn v. Columbian Ins. Co.*, 12 Pick., 285, 286. *Patapsco Ins. Co. v. South-*

gate, 5 Peters, 604. *Hall v. Franklin Ins. Co.*, 9 Pick., 466, 477, 478.

In the case of the brig "Sarah Ann," 2 Sumner, 215, Mr. Justice Story remarked: "If such an urgent necessity does exist, as renders every delay highly perilous, or ruinous to the interests of all concerned, the duty of the master is the same, whether the vessel be stranded on the home shore or on a foreign shore, whether the owner's residence be near, or be at a distance."

This opinion of Mr. Justice Story has been affirmed by the Supreme Court of the United States, in the case of the *New Eng. Ins. Co. v. brig "Sarah Ann,"* 13 Peters, 387, where the court says: "The true criterion for determining the occurrence of the master's authority to sell, is the inquiry whether the owners or insurers, when they are not distant from the scene of stranding, can, by the earliest use of the ordinary means to convey intelligence, be informed of the situation of the vessel in time to direct the master before she will be probably lost. If there is a probability of loss, and it is made more hazardous by every day's delay, the master may then act promptly, to save something for the benefit of all concerned, though but little may be saved. There is no way of doing so more effectually than by exposing the vessel to sale; by which the enterprise of such men is brought into competition as are accustomed to encounter such risks, and who know, from experience, how to estimate

the probable profits and losses of such adventures."

The doctrine adopted by Lord Mansfield (*Miles v. Fletcher*, Doug., 219), and recognized in jurisprudence ever since, is, that, on occasion of disastrous circumstances and extraordinary impediments to the voyage, the master is authorized to manage or dispose of the ship and cargo, in the same manner as a prudent owner would do in like circumstances, being influenced by predominating motives to prosecute the voyage. *Abbott on Shipp.*, 19. *Phillips on Ins.* (4th ed.), 1569. *Greene v. Royal Exch. Ass. Co.*, 1 Marsh. R., 447, S. C., 6 Taunt., 68. *Somes v. Sugrue*, 4 C. and P., 276. *Schooner "Tilton,"* 5 Mason, R. 475. *Gordon v. Mass. Fire and Mar. Ins. Co.*, 2 Pick. R., 249. *Robinson v. Commonwealth Ins. Co.*, 3 Sumner's Rep., 221.

(260). *What circumstances will justify a deviation by the master from the direct course of the voyage, and what will be the effect of a deviation wrongfully made?*

To justify a deviation, the necessity must be real, inevitable, and imperious; and it must not be prolonged one moment after the necessity has ceased.

A deviation without such necessity, vitiates all insurances upon the ship and cargo, and exposes the owners to an action on the part of the freighters.

(261). *Does the law make any distinction between carriers by land and carriers by water ?*

No. The master of a merchant ship is, in the eye of the law, a carrier, and is, as such, bound to take reasonable and proper care of the goods committed to his charge, and to convey them to the place of their destination, barring only the acts of God, etc.

(262). *If injury be done to the cargo by improper or careless stowage, will the master be liable ?*

He will.

(263). *What is the meaning of the term seaworthy ?*

It is a term applied to the ship, indicating that she is in every respect fit for the voyage.

It is provided in all charter-parties, that the vessel chartered shall be "tight, staunch, and strong, well appareled, furnished with an adequate number of men and mariners, tackle, provisions, etc.

If the ship be insufficient in any of these particulars, the owners, though ignorant of the circumstances, will be liable for whatever damage may, in consequence, be done to the goods of the merchant ; and if an insurance has been effected upon her, it will be void.

Whether the condition of seaworthiness be ex-

pressed in the charter-party or not, it is always implied.

A ship is not seaworthy unless she be provided with all the documents or papers necessary for the manifestation of the ship and cargo.

(264). *Is it only necessary to guarantee the owners from loss, that the ship should be seaworthy at the time of her departure?*

This is all that is necessary ; she may cease to be so in a few hours, and yet they may not be liable. The question to be decided in such cases always is, whether the ship's disability arose from any defect existing in her *before* her departure, or from cause which occasioned it *afterwards*.

But if a ship, within a day or two of her departure, become leaky and foundered at sea, or be obliged to put back, without any visible or adequate cause to produce such an effect, such as the starting of a plank, or other accident to which the best ships are liable, and which no human prudence can prevent, the fair presumption is, that she was not seaworthy when she sailed ; and it will be incumbent on the owners to show that she was seaworthy at that time. They are liable for damage occasioned by every injury arising from any *original defect* in the ship, or from bad stowage ; but they are not liable for any injury arising from the act of God, enemies, or the perils of the sea.

(265). *Must the ship be in all respects fit for the trade in which she is meant to be employed?*

She must, no matter how perfect soever she may be ; yet if, from the nature of her construction, or any other causes, she be incapable of performing the proposed voyage, with the proposed cargo on board, she is not seaworthy.

In *Putnam v. Wood* (3 Mass., 481), the court said that "it is the duty of the owner, of a ship, when he charters her, or puts her up for freight, to see that she is in a suitable condition to transport her cargo in safety, and he is to keep her in that condition, unless prevented by perils of the seas, or unavoidable accidents. If the goods are lost by any defect in the vessel, whether latent or visible, known or unknown, the owner is answerable to the freighter, upon the principle that he tacitly contracts that his vessel shall be fit for the use for which he employs her."

(266). *What is the nature and effect of a contract by bill of lading?*

When the master and owners of a vessel destined to proceed on a particular voyage, enter into separate engagements with different persons to convey their respective goods to the place of the vessel's destination, the contract with the several freighters respectively is expressed and evidenced by what is denominated a *bill of lading* ; and the ship, in such

case, is called a *general ship*. The contract is usually made personally with the master, but is, nevertheless, considered in law to have been made with the owners also; and both he and they are separately bound, as well as the ship, *in specie*, for its performance. (For the most common form of a bill of lading, see *Appendix*.) It is signed by the master, and delivered to the freighter. Sometimes two, and sometimes three, bills of lading are thus signed and delivered, of which the merchant commonly sends one or two to his agent, factor, or other person to whom the goods are to be delivered at the place of destination; that is, one on board the ship with the goods, another by the post or other conveyance, and one he retains for his own security. The master should also take care to have another for his own use.

(267). *What is a contract by charter-party?*

When a merchant hires a ship, or some defined part of it, for a voyage to one or more places, the contract, when in writing, is denominated a *charter-party*; it is derived from the Latin words *charta*, *partita*.

If the contract is made at the place of the owners' residence, it is usually executed by them or some of them (and frequently by the master also), and by the merchant or his agent. In a foreign port, unless the owners have an agent at the

port empowered to execute the instrument for them, it is of necessity executed by the master only, and by the merchant or his agent. It may be for the entire ship, or an entire part of the ship, or for each ton or other portion of its capacity; and the sum to be paid for freight is, again, either a gross sum for the whole voyage or voyages, or a particular sum for every month or week of the ship's employment. Sometimes, also, the freight is expressed to be a certain sum for every ton, cask, or bale of goods put on board; in which case the merchant usually covenants not to put on board less than a specified number of tons, casks, or bales; and where the payment is to be by the ton of goods, it is usual and proper to add, "and so in proportion for a less quantity than a ton." Abbott on Shipp., Boston ed. of 1846, 316, 321. 3 Kent's Com., 3d ed., 204.

(268). *What are the contents of the charter-party?*

The usual stipulations on the part of the owner or master are, that the ship shall be tight and staunch, furnished with all necessities for the intended voyage, ready by a day appointed to receive the cargo, and wait a certain number of days to take it on board; that, after lading, she shall sail with the first fair wind and opportunity to the destined port (the dangers of the seas excepted), and there deliver the goods to the merchant or his

assigns, in the same condition they were received on board ; and further that, during the course of the voyage, the ship shall be kept tight and staunch, and furnished with sufficient men and necessaries, to the best of the owners' endeavors. Abbott on Shipping, Boston ed. of 1846, 323. See form of charter-party in the *Appendix*.

(269). *Is a bill of lading to be also given?*

Upon the delivery by the charterer of his goods on board the vessel, in pursuance of a charter-party of the nature above described, the master signs a bill of lading for them, as in the case of shipments on board a general ship, the design of a charter-party being to secure the charterer the exclusive right to the use of the ship to the extent and upon the terms stipulated, and the bill of lading being the evidence of the shipping of the particular merchandise to be conveyed in pursuance of the contract. Conkling's U. S. Admiralty, page 132.

(270). *Are the rights and obligations of the parties to a contract by charter-party the same as in cases of contract by bill of lading alone?*

The general nature of the contract, in both cases, is essentially the same. A charter-party is for the whole, or for a specified and generally large part of the vessel ; and a bill of lading is for an indefinite and generally smaller portion of the vessel's ca-

capacity. Both contracts, in one aspect, are for the hire of the whole or a part of the vessel ; both, in another aspect, are for the conveyance of merchandise. In both cases the ship-owner is the carrier, and he has a lien on the merchandise for the transportation. *Drinkwater v. the freight and cargo of the "Spartan," Ware's R.*, 149, 155.

(271). *In suits in admiralty, who are material men ?*

Under this general denomination are comprised all persons who furnish materials for the building, equipment, repair, outfit, or use of vessels employed in maritime navigation.

(272). *Are the wages of mariners insurable ?*

They are universally considered *not* to be insurable by the mariners themselves, not on account of the insufficiency of the interest and risk, but lest their motives to exertion for the safety of the ship and cargo should be diminished. 1 *Emer.*, 235, c. 8, s. 10.

(273). *Are the mate's wages insurable ?*

They are not, nor is any privilege he may have in the vessel instead of wages. But he may insure his property on board, though bought with the money received as wages. *Webster v. De Tastet*, 7 T. R., 157. 1 *Mag.*, 18.

A mariner, having a privilege of carrying a certain quantity of goods, may insure the goods ; for it is the freight, and not the goods themselves, that constitute a part of his wages. *Galloway v. Morris*, 3 Yeates, 445.

(274). *Can the captain insure his wages ?*

The captain may insure his wages, commissions, or privileges on board of the vessel, as he is presumed to be a man of more trust than a sailor. *Foster v. Hoyt*, 2 John's Cas., 327.

(275). *What is barratry, as understood in the English law ?*

It means fraudulent conduct on the part of the master, in his character of master, or of the mariners, to the injury of the owner, and without his consent ; and it includes every breach of trust committed with dishonest views. 3 Kent's Comm., 304. *Dixon v. Reid*, 5 Barn. & Ald., 597.

(276). *How is barratry defined in the courts of the United States ?*

The English rule is followed, and the English decisions are taken as authority, in deciding questions of barratry. *The Patapsco Ins. Co.*, 3 Peters' S. C. Rep., 321. 8 East, 126. 11 Peters 268. 1 Taunt., 227.

The trade with an enemy without leave of the

owner, though it be intended for his benefit, or for a neutral to resist search, though his motive be to serve the owner, or for a letter of marque to cruise, and make a prize, though done for the benefit of the owner, if the ship be lost by reason of the acts, are all of them acts of barratry. So, sailing out of port in violation of an embargo, or without paying the port duties, or to go out of the regular course upon a smuggling expedition, or to be engaged in smuggling against the consent of the owner, are all of them acts of barratry, equally with more palpable and direct acts of violence and fraud—for they are willful breaches of duty by the master, in his character of master, to the injury of the owners. *Robertson v. Ewer*, 1 Term Rep., 127. *Cook v. Com. Ins. Co.*, 11 John's Rep., 40. *Wilcox v. Union Ins. Co.*, 2 Binn's. Rep., 574.

It is not necessary, in order to constitute barratry, that the master should derive, or even intend to derive, any benefit from the act done. Hence where the master sailed out of port without paying the port duties, whereby the ship was forfeited, it was holden to be barratry. *Knight v. Cambridge*, 8 East, 135, 136. *Kendrick v. Delafield*, Caine's Rep., 57.

So, where the master, without the consent or acknowledgment of his owner, load on board the vessel such goods as will subject her to confiscation, it is barratry. *Suckley v. Delafield*, 2 Caine's Rep., 222.

(277). *Does a mere breach of contract on the part of the master constitute a barratry?*

It does not. 2 Stra., 1173. Cowp., 153. 8 East, 136, 137. *Piper v. Cope*, 1 Campb., 443.

(278). *Can the act of a freighter, under a general charter-party, be treated as barratry?*

It cannot. *Vallejo v. Wheeler*, Cowp., 143. *James v. Jones*, 3 Esp. Rep., 27.

(279). *What effect has barratry upon a policy of insurance?*

It will entirely vitiate a policy, unless specially insured against. 3 Kent's Com., 304.

(280). *Upon a policy covering a loss of barratry, and barratry is actually committed, and, subsequent to the barratrous act, a loss happens, will the insurers be liable?*

They will, if the loss happen in the course of the voyage insured. *Lockyer v. Offley*, 1 T. R., 252.

(281). *What is deviation, as understood in a policy of insurance?*

It is where a ship, insured for a certain voyage, sails on a different voyage; or, in other words, where the *terminus à quo* or the *terminus ad quem* of the voyage for which the ship is destined, and on

which she sails, is different from that specified in the policy for the commencement or the conclusion of the risk. Kinne on the Law of Ins., vol. 1, 536.

(282). *What is the legal effect of a deviation?*

It entirely vitiates the contract. *Ibid.*

(283). *In what cases may voluntary deviations be justified?*

Stopping or going out of the way to relieve a vessel in distress, or to save lives or goods, may, perhaps, under certain circumstances, not be considered as a deviation which discharges the insurer. 6 East, 54. *Bond v. the brig "Corn,"* 2 Wash. C. C. Rep., 80. *Foster v. Gardner*, Amer. Jurist, No. 21.

(284). *What effect is given to the word touch, or to the words touch and stay, at an intermediate port on the passage?*

If there be liberty granted by the policy to touch, or, to touch and stay, at an intermediate port on the passage, the better opinion now is, that the insured may trade there, when consistent with the object and the furtherance of the adventure, by breaking bulk, or by discharging and taking in cargo, provided it produces no unnecessary delay, nor enhances nor varies the risk. Vide Kinne's Law Compendium, and cases there cited, vol. 1, p. 537.

(285). *What course is the master bound to pursue when there are several ports of discharge mentioned in the policy?*

If he goes to more than one, he must go to them in the order in which they are named in the policy; or, if they be not specifically named, he must generally go to them in the geographical order in which they occur, though there may be cases in which he need not follow the geographical order. *Marsden v. Reid*, 3 East's Rep., 572. *Houston v. New Eng. Ins. Co.*, 5 Pick. R., 89.

(286). *What is the distinction between an alteration of a voyage and a deviation?*

The one is adopted previous to the commencement of the risk, and shows that the party had receded from his agreement; but the other takes place after the risk has commenced, and relates only to the execution of the original plan. Vide *Kinne's Law Compendium*, and cases there cited, vol. 1, p. 538.

(287). *What is the effect of taking on board more, or a different kind of cargo, than is authorized by the policy?*

• It amounts to a deviation, and will discharge the insurer; and not because of any supposed increase of risk, but wholly on the departure of the insured from the contract of insurance.

When the terms of the contract are departed from, the risks are ended and the premium acquired.

The shortness of the time, or of the distance of the deviation, makes no difference as to its effect on the contract ; if voluntary and without necessity it is the substitution of another risk, and determines the contract.

If goods insured, are transhipped without necessity into another vessel than the one intended by the policy, it is a deviation. *Ibid.*

(288). *What if the ship, after having deviated, returns to the proper course, and while pursuing that course, loss happens ?*

The insurer will not be held responsible for the loss ; for, by the act of deviation, the contract was completely dissolved. *Ibid.*

(289). *Will mere delay amount to a deviation ?*

It will ; and the length of time a vessel may wait to take in her cargo, without discharging the underwriters, does not depend upon the usage of the trade. *Ibid.*

(290). *If the voyage is broken up, after it has been commenced, at any intermediate port, by the volun-*

tary act of the master or owner, or by their default, what amount of wages will be due to the seamen?

It seems that full wages are due for the voyage. *Wolf v. the "Oder,"* 2 Peters' Adm., 415. *Hoyt v. "Wildfire,"* 3 John's, 518. *Emerson v. Howland,* 1 Mason, 45. *Abbott on Shipping,* 8th ed., 631, n.

(291). *In case of shipwreck, are seamen entitled to their wages?*

That seamen are entitled to their wages, or a compensation equivalent to their wages, by way of salvage, in case they do their duty, and sufficient is saved from the wreck for that purpose, was decided many years ago by the American courts, and seems now fully established. *Abbott on Shipp.,* 8th ed., 632, n. It was so held by Judge Winchester, in a case cited in 1 Peters' Adm., 186, note, and by Judge Peters, in *Giles v. the "Cynthia,"* 2 Peters, 203; *Weeks v. the "Catharina Maria,"* *id.*, 424; *Taylor v. the "Cato,"* 1 Peters' Adm., 48, 58. The same point was adjudged in *Frothingham v. Prince,* 2 Mass., 563; and more fully in 2 Dane, Abridg., ch. 57, art. 1, s. 3, p. 462. In *Dunnet v. Tomhagen,* 3 John's, 154, where a ship was abandoned at sea as a wreck, on her homeward voyage, and some part of her cargo was saved by the ship's crew in the boat, the court held, that no wages were due for that part of the voyage, though the seamen

might have an equitable lien on the goods saved for a compensation, in the nature of salvage.

Mr. Chancellor Kent remarks that, "in such cases, where the voyage is broken up by *vis major*, and no freight is earned, no wages, *eo nomine*, are due; and the equitable claim, which seamen may have upon the remains of the wreck, is rather a claim for salvage, and seems to be incorrectly denominated in the books a title to wages." 3 Kent (5th ed.), 195, 196. See *Adams v. the "Sophia,"* 1 Gilpin, 77; *Brackett v. the "Hercules,"* 1 Gilpin, 184, in which Judge Hopkinson held that, where a portion of the vessel or her cargo was saved by the meritorious exertions of the seamen, a new lien arose thereon—the original contract being canceled—though the freight be lost.

In *Lewis v. the "Elizabeth and Jane,"* Ware, 41, it was held that the wreck is pledged by the maritime law for the payment of wages, and the seamen's privilege is preferred to all other claims.

If, however, they abandon the wreck, the contract between them and the owner is dissolved, they lose their privilege against the ship and their claim for wages, and they are not restored by the *jus postliminii*, or the salvage of the property by other persons, *ib.* *Pitman v. Hooper*, 3 Sumner, 67. The "*Two Catharines*," 2 Mason, 347.

In the case of "*The Dawn*" (26 Amer. Jur., 216, S. C., Davies' Rep., 121), it was held that, in case of shipwreck, the seamen are, by the maritime

law, bound to remain by the vessel, and exert themselves to save all that is possible of the ship and cargo. When they do this, they are entitled to their full wages, without deduction, against the material which they save of the ship, if enough is saved to pay them. And they are entitled to a further reward, in the nature of salvage, against the whole mass of property saved. Their claim is not as general or volunteer salvors, nor are they entitled to an equally large salvage ; but they are entitled to a reasonable allowance, *pro opera et labore*, according to the circumstances of the case, and the merits of their services. When the disaster happens in foreign parts, this ought not to be less than the expenses of their return home. "The Dawn," *supra*. This case furnishes a most ample and lucid analysis of the cases, and a full discussion of the whole subject.

In the case of *Jones v. the wreck of the "Massasoit"* (U. S. Dist. Ct., Boston, Mass., Dec., 1844, Adm. 7 Law Rep., 522), Judge Sprague remarks, that to allow mariners, in the case of shipwreck, to claim as salvors, "would not only be inconsistent with the contract of hiring, but a startling violation of that principle of maritime policy which sedulously endeavors to bind up the interest of the mariner with that of the owner. It would be not only an inducement to relax his efforts in time of difficulty and danger, but a direct temptation to cause shipwreck and disaster. that he might suc-

cessfully claim the large rewards of salvage service." See the "*Reliance*," 2 W. Rob., 122. "There may, however, be extraordinary cases, in which seamen may become salvors of their own vessel, as stated by Lord Stowell, in the '*Neptune*,' 1 Hagg. Adm., 227, 237, and by Mr. Justice Story, more liberally, in the '*Two Catharines*,' 2 Mason, 219, and as in the '*Blaireau*,' 2 Cranch, 240, 269, 270, although that was against the judgment of that able jurist, Mr. Justice Washington, as appears in the '*Cato*,' 1 Peters' Adm., 61, 62."

The court, in the case of the wreck of the "*Massasoit*," relying on the authority of the "*Neptune*," (1 Hagg. Adm., 227), *Pitman v. Hooper* (3 Sumner, 60), and the intimations of the court in the "*Two Catharines*" (2 Mason, 334), held that, in case of shipwreck, seamen are entitled to wages, as such, if, by their exertions, remnants of the vessel to the amount of the wages are saved, although no freight be earned.

The court, in that case, further held, that if, after the vessel is cast on shore, the owner appears, with a competent force, supersedes the officers, and takes the business of salvage out of the hands of the seamen, and neither affords them subsistence nor desires their aid—they being willing to render it—they may recover their wages in a suit *in rem.*, against the remnants of the vessel.

The subject of allowances made to mariners, out of the remnants saved by them from the wreck of

the vessel, is fully and ably discussed in Curtis's Rights and Duties of American Seamen; 285, 290 ; and the true doctrine is said there to be stated by Judge Sprague, in the above case of the "Massasoit." See Abbott on Shipping, with Story and Perkins' notes, 8th ed., page 770, chap. 2, title, "Of the Earning and Payment of Wages ;" and herein :

(293.)

C I R C U L A R

Issued by the Boston Underwriters (drawn up for them by Gen. John S. Tyler, Average Adjuster, Boston), as to the duties of agents, masters, and others, on a vessel entering a foreign port in distress :

"SIR :—As you have a limited authority to act for our companies at your port, we now propose to make a few suggestions for your guidance. It is obviously impossible to anticipate the infinite variety of circumstances in which masters of vessels may be placed by sea perils, or the want of funds. We can only call your attention to some of the most frequently-recurring instances in which you may have occasion to act.

"*First*, and most prominent among the cases in which property is sacrificed under the forms of law, is the sale of vessels abroad. These sales are usually made under the pretense that the cost of repairs will exceed the value of the vessel when repaired, or be so great in comparison with her value, as to make it inexpedient to do so.

"The proof of the facts comes forward sometimes under the form of regular estimates, but most generally no estimates at all are given, or at a most lumping certificate that the cost will be a large sum. To guard, as well as possible, against this abuse, it is desirable that you select men of competent judgment and undoubted integrity, to examine every vessel which is said to require repairs, and to cause them to prepare detailed estimates of the cost, in which estimates they should point out distinctly what part, if any, of the repairs needed, have been rendered necessary by perils of the sea, and what part, if any, is merely the repair of ordinary wear and tear.

"It will be well, always, if possible, to get the certificate of competent and responsible mechanics, in each branch, that the work can be done at the estimates, and that they are willing to contract to do it.

"Your personal attention to the examination of the vessel will always be important. Surveyors are easily influenced by what they suppose to be the wishes of their employers, and often come to hasty conclusions, from a belief that their action is a mere form, intended to sanction a course of proceeding already determined upon. In this connection, we will call your attention to the mode adopted at many ports for appointing and paying surveyors. The consul requires the master to address to him a written request for a survey. He

then makes an appointment of two or more persons; these persons examine the vessel and make a written report, for which service the consul pays them a large fee. The consul records the master's letter, the act of appointment, and the report, makes a certificate of the authenticity of each, and two or three copies, all of which he authenticates, and charges for each certificate. Thus, a mere preliminary survey is made to cost from seventy-five to one hundred dollars, when the whole thing might and should be accomplished for ten dollars.

"Now you will understand that there is neither law nor necessity for the interference of a consul of the United States in the appointment of surveyors; any competent men may be selected, with the approbation of the master, and you may agree with them as to fees, in the same manner that you may bargain about anything else. Whenever their reports are finally made up, it will be expedient to have one certificate from the consul that the surveyors appeared before him and verified their acts; but even this may be dispensed with.

"The consular fees, at many ports, have grown to be most extravagant. The habit of multiplying papers to justify charges has become absolutely outrageous, and we hope you will take every precaution to check the abuse.

"One set of surveyors visiting the vessel one or more times, as circumstances may render necessary, making one report comprising distinctly what they

saw and what they did, at each visit, is all that is needful. This is the European custom, and the custom of most of our own ports. To give a man an extravagant fee for each visit, and to send him several times—or several sets of men at different times—going through all the forms of written appointment, return, and record, is an absolute imposition.

“There is an impression current among nautical men, that if a vessel cannot be repaired at such a cost as will not exceed half her value when repaired, she may be abandoned, and sold. This is a false impression. The policies in use in New England require that the cost of repairs under an adjustment, as of a partial loss, shall exceed half the sum insured, or there can be no abandonment. The sum insured means the valuation of the vessel in the policy, and the cost of repairs means the cost of materials and labor, exclusive of the expenses of delay, port-charges, etc. For example, we will suppose that a vessel arrives at your port which is valued for insurance at \$20,000, that it turns out, on survey and estimate, that it will cost to repair her \$12,000, and it appears that the wages and provisions of the crew, port-charges, consular fees, etc, will be \$3,000. Under an adjustment as of a partial loss,

The cost of repairs being	\$12,000
One-third is deducted for new	4,000
Leaving	<u>\$8,000.</u>

“The insured value being \$20,000, half is \$10,000, and hence there can be no abandonment under a New England policy.

“From ignorance of this rule, masters of vessels frequently suffer them to be sold, under the belief that their owners will recover a total loss; and when the error is discovered, there is generally a disposition to exaggerate the degree of injury the vessel had received, and to set up the impossibility of getting funds, and various similar pretenses and excuses, because the mischief is done, and the assured is unwilling to suffer for his master's mistake.

“We would impress upon you, therefore, the importance of informing masters seasonably, what may be the consequence of selling their vessels under such circumstances.

“*Secondly.* It not unfrequently happens that vessels are sold by masters abroad, simply because funds cannot be readily obtained to pay for repairs, and it has become a system in many places, of late years, to advertise for a loan on bottomry, and, in case no offer is made within a few days, to sell the vessel.

“Now, there is no justification for the sale of a vessel in the mere fact that money cannot be had on bottomry to pay for the repairs she needs, and you will endeavor to make this understood by shipmasters. If it happens in any case that a master is unable to get money, and he chooses, for that cause,

to abandon the vessel, he may do so without selling her. The right to sell is founded upon a totally different principle. If the vessel is in good safety, and may remain so until her owners or their underwriters can be informed of the want of money to pay for repairs, the master has no legal authority to sell her, and any title he attempts to give will be invalid. It is only when the vessel is so situated that there is imminent danger of her being totally lost, while waiting for advices from her owners, that the master is justified in selling her. This rarely is the case while a ship is in a good harbor, and the time required to get instructions from hence can generally be computed very accurately. It is the master's duty, therefore, to adopt one of three courses when so placed. The first is to go on with the repairs while advices to and from his owners are in transit; this he may generally do, because the vessel remains as a security for the debts he contracts; and if the owners neglect or refuse to furnish funds, she may then be sold. The second is to wait for orders before making repairs; this is attended with expense and loss of time, and is, therefore, to be avoided if practicable. The third is to leave the vessel in charge of some responsible house (having discharged the crew), and proceed home himself. This course will enable the owners and their insurers to determine for themselves, as to the expediency of a sale. It is a course which a master should hesitate to take, if he

would avoid the charge of abandoning his duty ; but, nevertheless, it is a lawful course, and, therefore, better than a sale. We trust that you will point out to ship-masters the impropriety of selling their vessels, and give them to understand that the loss will fall upon their owners, and not upon the insurers, if a sale be made without a legal justification.

“ You must expect to find some masters who will entertain the popular but mistaken idea, *that their owners will make a good sale* if they can get rid of the vessel and recover their insurance ; and hence that it is only necessary to obtain the recommendation or order of surveyors that a sale be made, and make it. These men should be informed that the opinions of surveyors are not conclusive, nor can the *sale* be made a ground for the recovery of a total loss, unless the facts justify it, whatever may be the opinions of the surveyors. If a vessel be so much damaged by sea perils that the cost of repairs will exceed three-fourths of her value in the policy, and this fact can be established by the reports of competent surveyors and the estimates of competent mechanics, then a sale is justifiable—otherwise it is not.

“ *Thirdly.* With respect to procuring funds, it should be understood that a ship-master has a legal right to draw upon his owners, and to bind them. They cannot refuse to pay his drafts for money required for necessary repairs and expenses. Hence

if the owners are parties of responsibility, the master's drafts are good security for advances without a bottomry.

"If a bottomry-bond is taken, the party advancing the money assumes the usual sea-risks; and the owner will have the right, at the termination of the voyage, to abandon the property hypothecated to the bondholder, and get rid of further responsibility.

"Such being the law, it is generally better for the lender to take the master's drafts than a bottomry-bond, if the owners are responsible. Sometimes drafts are taken with a bottomry-bond as a collateral security. There is room for doubt whether a bond thus taken has any legal force; but it may serve to induce payment of the drafts promptly, and in some cases you may find it expedient to adopt that form of security when you make or obtain advances. We make these suggestions in the hope that you may find it practicable, in most cases, to furnish or obtain such funds as may be required for repairs and expenses, and thus prevent the waste of property which has been incurred in too many instances, of late, by delays or extravagant bottomry premiums. At the same time, you are to understand that we do not intend, by these suggestions, to assume any responsibility whatever for any advances you may make, or procure to be made. If, in any particular case, it shall turn out that one or more of our companies

are directly interested, you may receive special instructions from such companies, which will bind them for advances; but no obligation of the kind is to be implied from these instructions.

“In conclusion, we remind you that the limited authority you have received is not intended, in any case, to justify you in assuming the control of matters which are by law left to the discretion of the master. You are to give advice, and, upon such responsibility as you may deem satisfactory, you are, of course, at liberty to render more substantial aid in the way of funds; but you are not at liberty to relieve the master from any just accountability for the measures he may adopt, so far as his acts may affect any questions which may arise under policies of insurance.

“If a master, who is advised by you to take a course which you believe a proper one, shall, nevertheless, act otherwise, you will merely report to some one of us here the precise facts, with such proofs as may be accessible of the wrong done, or error committed.”

STATUTES.

(292.)

ACT OF DEC. 31, 1792.

An Act concerning the Registering and Recording of Ships or Vessels.

SEC. 1. *Be it enacted, etc.,* That ships or vessels which shall have been registered by virtue of the act, entitled "An Act for Registering and Clearing Vessels, Regulating the Coasting Trade, and for other Purposes," and those which, after the last day of March next, shall be registered pursuant to this act, and no other (except such as shall be duly qualified, according to law, for carrying on the coasting trade and fisheries, or one of them), shall be denominated and deemed ships or vessels of the United States, entitled to the benefits and privileges appertaining to such ships or vessels: *Provided,* That they shall not continue to enjoy the same longer than they shall continue to be wholly owned, and to be commanded by, a citizen or citizens of the said States.

SEC. 2. That ships or vessels built within the United States, whether before or after the fourth of July, one thousand seven hundred and seventy-six, and belonging wholly to a citizen or citizens thereof; or not built within said States, but, on the sixteenth day of May, in the year one thousand seven hundred and eighty-nine, belonging and thenceforth continuing to belong to a citizen or citizens thereof; and ships or vessels which may hereafter be captured in war, by such citizen or citizens, and lawfully

condemned as prize, or which have been, or may be, adjudged to be forfeited for a breach of the laws of the United States, being wholly owned by a citizen or citizens thereof, and no other, may be registered as hereinafter directed: *Provided*, That no such ship or vessel shall be entitled to be so registered, or, if registered, to the benefits thereof, if owned, in whole or in part, by any citizen of the United States, who usually resides in a foreign country, during the continuance of such residence, unless such citizen be in the capacity of a consul of the United States, or an agent for, and a partner in, some house of trade or copartnership, consisting of citizens of the said States, actually carrying on trade within the said States: *And provided, further*, That no ship or vessel, built within the United States prior to the said sixteenth day of May, which was not then owned wholly, or in part, by a citizen or citizens of the United States, shall be capable of being registered, by virtue of any transfer to a citizen or citizens which may hereafter be made, unless by way of prize or forfeiture: *Provided, nevertheless*, That this shall not be construed to prevent the registering anew of any ship or vessel which was before registered, pursuant to the act before mentioned.

SEC. 3. That every ship or vessel, hereafter to be registered (except as hereinafter provided), shall be registered by the collector of the district, in which shall be comprehended the port to which such ship or vessel shall belong at the time of her registry, which port shall be deemed to be that at or nearest to which the owner, if there be but one, or, if more than one, the husband, or acting and managing owner of such ship or vessel, usually resides. And the name of the said ship or vessel, and of the port to which she shall so belong, shall be painted on her stern, on a black ground, in white letters, of not less than three inches in length. And if any ship or vessel of the United States shall be found without having her name, and the name of the port to which she belongs, painted in manner aforesaid, the owner or owners shall forfeit fifty dollars; one half to the person giving the information thereof, the other half to the use of the United States.

SEC. 4. That, in order to the registry of any ship or vessel, an oath or affirmation shall be taken and subscribed by the owner, or by one of the owners thereof, before the officer authorized to make such registry, who is hereby empowered to administer the same, declaring, according to the best of the knowledge and belief of the person so swearing or affirming, the name of such ship or vessel, her burden, the place she was built, if built within the United States, and the year in which she was built; and if built within the United States before the said sixteenth day of May, one thousand seven hundred and eighty-nine, that she was then owned only, or in part, by a citizen or citizens of the United States, and if not built within the said States, that she was, on the said sixteenth day of May, and ever since hath continued to be, the entire property of a citizen or citizens of the United States; or that she was, at some time posterior to the time when this act shall take effect (specifying the said time), captured in war by a citizen or citizens of the said States, and lawfully condemned as a prize (producing a copy of the sentence of condemnation, authenticated in the usual forms), or that she has been adjudged to be forfeited for a breach of the laws of the United States (producing a like copy of the sentence whereby she shall have been so adjudged), and declaring his or her name and place of abode, and, if he or she be the sole owner of the said ship or vessel, that such is the case; or, if there be another owner or other owners, that there is or are such other owner or owners, specifying his, her, or their name or names, and place or places of abode, and that he, she, or they, as the case may be, so swearing or affirming, is or are citizens of the United States; and where an owner resides in a foreign country, in the capacity of a consul of the United States, or as an agent for, and a partner in, a house or copartnership consisting of citizens of the United States, and actually carrying on trade within the United States, that such is the case, and that there is no subject or citizen of any foreign prince or state, directly or indirectly, by way of trust, confidence, or otherwise, interested in such ship or vessel, or in

the profits or issues thereof; and that the master, or commander thereof, is a citizen, naming the said master or commander, and stating the means whereby, or the manner in which, he is so a citizen. And in case any of the matters of fact in the said oath or affirmation alleged, which shall be within the knowledge of the party so swearing or affirming, shall not be true, there shall be a forfeiture of the ship or vessel, together with her tackle, furniture, and apparel, in respect to which the same shall have been made, or of the value thereof, to be recovered with costs of suit, of the person by whom such oath or affirmation shall have been made: *Provided, always,* That if the master, or person having the charge or command of such ship or vessel, shall be within the district aforesaid when application shall be made for registering the same, he shall, himself, make oath or affirmation, instead of the said owner, touching his being a citizen, and the means whereby, or manner in which, he is so a citizen; in which case, if what the said master, or person having the said charge or command, shall so swear or affirm, shall not be true, the forfeiture aforesaid shall not be incurred, but he shall, himself, forfeit and pay, by reason thereof, the sum of one thousand dollars. *And, provided further,* That in case of a ship or vessel, built within the United States prior to the sixteenth day of May aforesaid, which was not then owned by a citizen or citizens of the United States, but which, by virtue of a transfer to such citizen or citizens, shall have been registered, pursuant to the act before mentioned, the oath or affirmation hereby required, shall and may be varied according to the truth of the case, as often as it shall be requisite to grant a new register for such ship or vessel.

SEC. 5. That it shall be the duty of every owner, resident within the United States, of any ship or vessel to which a certificate of registry may be granted (in case there be more than one such owner), to transmit to the collector, who may have granted the same, a like oath or affirmation with that hereinbefore directed to be taken and subscribed by the owner, on whose application

such certificate shall have been granted, and within ninety days after the same may have been so granted, which oath or affirmation may, at the option of the party, be taken and subscribed, either before the said collector, or before the collector of some other district, or a judge of the Supreme or a District Court of the United States, or of a Superior Court of original jurisdiction of some one of the States. And if such oath or affirmation shall not be taken, subscribed, and transmitted, as is herein required, the certificate of registry, granted to such ship or vessel, shall be forfeit and void.

SEC. 6. That, before any ship or vessel shall be registered, she shall be measured by a surveyor, if there be one, or by the person he shall appoint at the port or place where the said ship or vessel may be; and if there be none, by such person as the collector of the district, within which she may be, shall appoint, according to the rule prescribed by the forty-third section of the act, entitled "An Act to provide more effectually for the Collection of the Duties imposed by Law on Goods, Wares, and Merchandise imported into the United States, and on the Tonnage of Ships or Vessels;" and the officer or person by whom such admeasurement shall be made, shall, for the information of, and as a voucher to, the officer by whom the registry is to be made, grant a certificate specifying the built of such ship or vessel, her number of decks and masts, her length, breadth, depth, the number of tons she measures, and such other particulars as are usually descriptive of the identity of a ship or vessel; and that her name, and the place to which she belongs, are painted on her stern in manner required by the third section of this act, which certificate shall be countersigned by an owner, or by the master of such ship or vessel, or by some other person who shall attend her admeasurement on behalf of her owner or owners, in testimony of the truth of the particulars therein contained, without which the said certificate shall not be valid. But in all cases where a ship or vessel has before been registered as a ship or vessel of the United States, it shall not be necessary to measure her anew for the pur

pose of obtaining another register, except such ship or vessel shall have undergone some alteration, as to her burden, subsequent to the time of her former registry.

SEC. 7. That, previous to the registry of any ship or vessel, the husband, or acting and managing owner, together with the master thereof, and one or more sureties, to the satisfaction of the collector of the district whose duty it is to make such registry, shall become bound to the United States, if such ship or vessel shall be of burden not exceeding fifty tons, in the sum of four hundred dollars; if of burden above fifty tons, and not exceeding one hundred, in the sum of eight hundred dollars; if of burden above one hundred tons, and not exceeding two hundred, in the sum of twelve hundred dollars; if of burden above two hundred tons, and not exceeding three hundred, in the sum of sixteen hundred dollars; and if of burden exceeding three hundred tons, in the sum of two thousand dollars, with condition, in each case, that the certificate of such registry shall be solely used for the ship or vessel for which it is granted, and shall not be sold, lent, or otherwise disposed of, to any person or persons whomsoever; and that, in case such ship or vessel shall be lost, or taken by an enemy, burnt, or broken up, or shall be otherwise prevented from returning to the port to which she may belong, the said certificate, if preserved, shall be delivered up within eight days after the arrival of the master, or person having charge or command of such ship or vessel, within any district of the United States, to the collector of such district; and that if any foreigner, or any person or persons for the use and benefit of such foreigner, shall purchase, or otherwise become entitled to, the whole, or any part or share of, or interest in, such ship or vessel, the same being within a district of the United States, the said certificate shall, in such case, within seven days after such purchase, change, or transfer of property, be delivered up to the collector of the said district; and that, if any such purchase, change, or transfer of property shall happen when such ship or vessel shall be at any foreign port or place, or at sea, then the

said master, or person having the charge or command thereof, shall, within eight days after his arrival within any district of the United States, deliver up the said certificate to the collector of such district; and every such certificate, so delivered up, shall be forthwith transmitted to the register of the treasury, to be canceled, who, if the same shall have been delivered up to a collector other than of the district in which it was granted, shall cause notice of such delivery to be given to the collector of the said district.

SEC. 8. That, in order to the registry of any ship or vessel which, after the last day of March next, shall be built within the United States, it shall be necessary to produce a certificate under the hand of the principal or master-carpenter by whom, or under whose direction, the said ship or vessel shall have been built, testifying that she was built by him, or under his direction, and specifying the place where, the time when, and the person or persons for whom, and describing her built, number of decks and masts, length, breadth, depth, tonnage, and such other circumstances as are usually descriptive of the identity of a ship or vessel, which certificate shall be sufficient to authorize the removal of a new vessel from the district where she may be built to another district in the same or an adjoining State, where the owner or owners actually reside, provided it be with ballast only.

SEC. 9. That, the several matters hereinbefore required having been complied with, in order to the registering of any ship or vessel the collector of the district, comprehending the port to which she shall belong, shall make and keep, in some proper book, a record or registry thereof, and shall grant an abstract or certificate of such record or registry, as nearly as may be, in the form following:

"In pursuance of an Act of the Congress of the United States of America, entitled 'An Act concerning the Registering and Recording of Ships or Vessels, [inserting here the name, occupation, and place of abode of the person by whom the oath or

affirmation aforesaid shall have been made] having taken or subscribed the oath [or affirmation] required by the said act, and having sworn [or affirmed] that he [or she, and, if more than one owner, adding the words 'together with,' and the name or names, occupation or occupations, place or places of abode of the other owner or owners] is [or are] the only owner [or owners] of the ship or vessel called the [inserting here her name], of [inserting here the port to which she may belong], whereof [inserting here the name of the master] is at present master, and is a citizen of the United States; and that the said ship or vessel was [inserting here when and where built], and [inserting here the name and office, if any, of the person by whom she shall have been surveyed or admeasured] having certified that the said ship or vessel has [inserting here the number of decks], and [inserting here the number of masts], and that her length is [inserting here the number of feet], her breadth [inserting here the number of feet], her depth [inserting here the number of feet], and that she measures [inserting here her number of tons], that she is [describing here the particular kind of vessel, whether ship, brigantine, snow, schooner, sloop, or whatever else, together with her built, and specifying whether she has any or no gallery or head]. And the said [naming the owner, or the master, or other person acting in behalf of the owner or owners, by whom the certificate of admeasurement shall have been countersigned, as aforesaid] having agreed to the description and admeasurement above specified, and sufficient security having been given, according to the said act, the said ship or vessel has been duly registered at the port of [naming the port where registered]. Given under my hand and seal, at [naming the said port], this [inserting the particular day] day of [naming the month], in the year [specifying the number of the year in words at length]:” *Provided*, That if the master, or person having the charge or command of such ship or vessel, shall himself have made oath or affirmation touching his being a citizen, the wording of the said certificate shall be varied, so as to be conformable to the truth of the

case. *And provided*, That where a new certificate of registry is granted, in consequence of any transfer of a ship or vessel, the words shall be so varied as to refer to the former certificate of registry for her admeasurement.

SEC. 10. That it shall be the duty of the secretary of the treasury to cause to be prepared and transmitted, from time to time, to the collectors of the several districts, a sufficient number of forms of the said certificates of registry, attested under the seal of the treasury, and the hand of the register thereof, with proper blanks, to be filled by the said collectors respectively, by whom, also, the said certificates shall be signed and sealed before they shall be issued; and, where there is a naval officer at any port, they shall be countersigned by him; and, where there is a surveyor, but no naval officer, they shall be countersigned by him; and a copy of each shall be transmitted to the said register, who shall cause a record to be kept of the same.

SEC. 11. That where any citizen or citizens of the United States shall purchase, or become owner or owners of, any ship or vessel, entitled to be registered by virtue of this act, such ship or vessel being within any district other than the one in which he or they usually reside, such ship or vessel shall be entitled to be registered by the collector of the district where such ship or vessel may be, at the time of his or their becoming owner or owners thereof, upon his or their complying with the provisions hereinbefore prescribed, in order to the registry of ships or vessels. And the oath or affirmation which is required to be taken, may, at the option of such owner or owners, be taken, either before the collector of the district, comprehending the port to which such ship or vessel may belong, or before the collector of the district within which such ship or vessel may be, either of whom is hereby empowered to administer the same: *Provided, nevertheless*, That whenever such ship or vessel shall arrive within the district comprehending the port to which such ship or vessel shall belong, the certificate of registry, which shall have been obtained as aforesaid, shall be delivered up to the collector of such district,

who, upon the requisites of this act, in order to the registry of ships or vessels, being complied with, shall grant a new one, in lieu of the first; and the certificate so delivered up, shall forthwith be returned, by the collector who shall receive the same, to the collector who shall have granted it; and if the said first-mentioned certificate of registry shall not be delivered up, as above directed, the owner or owners and the master of such ship or vessel, at the time of her said arrival within the district, comprehending the port to which such ship or vessel may belong, shall, severally, forfeit the sum of one hundred dollars, to be recovered with costs of suit; and the said certificate of registry shall henceforth be void. And, in case any of the matters of fact in the said oath or affirmation alleged, which shall be within the knowledge of the party so swearing or affirming, shall not be true, there shall be a forfeiture of the ship or vessel, together with her tackle, furniture, and apparel, in respect to which the same shall have been made, or of the value thereof, to be recovered, with costs of suit, of the person by whom such oath or affirmation shall have been made: *Provided, always,* That if the master or person, having the charge or command of such ship or vessel, shall be within the district aforesaid when application shall be made for registering the same, he shall himself make oath or affirmation, instead of the said owner, touching his being a citizen, and the means whereby, or manner in which, he is so a citizen; in which case, if what the said master, or person having the said charge or command, shall so swear or affirm, shall not be true, the forfeiture aforesaid shall not be incurred, but he shall himself forfeit and pay, by reason thereof, the sum of one thousand dollars.

SEC. 12. That where any ship or vessel, entitled to be registered pursuant to this act, shall be purchased by an agent or attorney for, or on account of, a citizen or citizens of the United States, such ship or vessel, being in a district of the United States more than fifty miles distant, taking the nearest usual route by land, from the one comprehending the port to which, by virtue

of such purchase, and by force of this act, such ship or vessel ought to be deemed to belong, it shall be lawful for the collector of the district, where such ship or vessel may be, and he is hereby required, upon the application of such agent or attorney, to proceed to the registering of the said ship or vessel, the said agent or attorney first complying, on behalf and in the stead of the owner or owners thereof, with the requisites prescribed by this act, in order to the registry of ships or vessels, except that in the oath or affirmation which shall be taken by the said agent or attorney, instead of swearing or affirming that he is owner of such ship or vessel, he shall swear or affirm that he is agent or attorney for the owner or owners thereof, and that he hath *bona fide* purchased the said ship or vessel, for the person or persons whom he shall name and describe as the owner or owners thereof: *Provided, nevertheless,* That whenever such ship or vessel shall arrive within the district, comprehending the port to which such ship or vessel shall belong, the certificate of registry, which shall have been obtained as aforesaid, shall be delivered up to the collector of such district, who, upon the requisites of this act, in order to the registry of ships or vessels, being complied with, shall grant a new one, in lieu of the first; and the certificate, so delivered up, shall forthwith be returned by the collector, who shall transmit the same to the collector who shall have granted it. And if the said first-mentioned certificate of registry shall not be delivered up, as above directed, the owner or owners, and the master of such ship or vessel at the time of her said arrival within the district comprehending the port to which she may belong, shall severally forfeit the sum of one hundred dollars, to be recovered, with costs of suit, and the said certificate of registry shall be thenceforth void. And, in case any of the matters of fact in the said oath or affirmation alleged, which shall be within the knowledge of the party so swearing or affirming, shall not be true, there shall be a forfeiture of the ship or vessel, together with her tackle, furniture, and apparel, in respect to which the same shall have been made, or of the value thereof,

to be recovered, with costs of suit, of the person by whom such oath or affirmation shall have been made: *Provided, always,* That if the master, or person having the charge or command of such ship or vessel, shall be within the district aforesaid, when application shall be made for registering the same, he shall, himself, make oath or affirmation, instead of the said agent or attorney, touching his being a citizen, and the means whereby, or manner in which, he is so a citizen; in which case, if what the said master, or person having charge or command, shall so swear or affirm, shall not be true, the forfeiture aforesaid shall not be incurred, but he shall, himself, forfeit and pay, by reason thereof, the sum of one thousand dollars.

SEC. 13. That, if the certificate of the registry of any ship or vessel shall be lost, or destroyed, or mislaid, the master, or other person having the charge or command thereof, may make oath or affirmation, before the collector of the district where such ship or vessel shall first be after such loss, destruction, or mislaying, who is hereby authorized to administer the same, which oath or affirmation shall be of the form following: "I, [inserting here the name of the person swearing or affirming], being master [or having the charge or command] of the ship or vessel called the [inserting the name of the vessel], do swear [or affirm], that the said ship or vessel hath been, as I verily believe, registered according to law, by the name of [inserting again the name of the vessel], and that a certificate thereof was granted by the collector of the district of [naming the district where registered], which certificate has been lost [or destroyed, or unintentionally and by mere accident mislaid, as the case may be], and [except where the certificate is alleged to have been destroyed] that the same, if found again, and within my power, shall be delivered up to the collector of the district in which it was granted;" which oath or affirmation shall be subscribed by the party making the same; and upon such oath or affirmation being made, and other requisities of this act, in order to the registry of ships or vessels, being complied with, it shall be lawful for the collector of the

district, before whom such oath or affirmation is made, to grant a new register, inserting therein that the same is issued in the room of the one lost or destroyed. But in all cases where a register shall be granted, in lieu of the one lost or destroyed, by any other than the collector of the district to which the ship or vessel actually belongs, such register shall, within ten days after her first arrival within the district to which she belongs, be delivered up to the collector of the said district, who shall thereupon grant a new register in lieu thereof. And in case the master or commander shall neglect to deliver up such register within the time aforesaid, he shall forfeit one hundred dollars, and the former register shall become null and void.

SEC. 14. That when any ship or vessel, which shall have been registered pursuant to this act, or the act hereby in part repealed, shall, in whole or in part, be sold, or transferred to a citizen or citizens of the United States, or shall be altered in form or burden, by being lengthened or built upon, or from one denomination to another, by the mode or method of rigging or fitting, in every case the said ship or vessel shall be registered anew by her former name, according to the directions hereinbefore contained, otherwise she shall cease to be deemed a ship or vessel of the United States; and her former certificate of registry shall be delivered up to the collector to whom application for such new registry shall be made, at the time that the same shall be made, to be by him transmitted to the register of the treasury, who shall cause the same to be canceled. And in every such case of sale or transfer, there shall be some instrument of writing, in the nature of a bill of sale, which shall recite at length the said certificate, otherwise the said ship or vessel shall be incapable of being so registered anew. And in every case in which a ship or vessel is hereby required to be so registered anew, if she shall not be so registered anew, she shall not be entitled to any of the privileges or benefits of a ship or vessel of the United States. And further, if her said former certificate of registry shall not be delivered up, as aforesaid—except where the same may have been

destroyed, lost, or unintentionally mislaid, and an oath or affirmation thereof shall have been made, as aforesaid—the owner or owners of such ship or vessel shall forfeit and pay the sum of five hundred dollars, to be recovered with costs of suit.

SEC. 15. That when the master, or person having the charge or command of the ship or vessel registered, pursuant to this act, or the act hereby in part repealed, shall be changed, the owner, or one of the owners, or the new master of such ship or vessel, shall report such change to the collector of the district where the same shall happen, or where the said ship or vessel shall first be, after the same shall have happened, and shall produce to him the certificate of registry of such ship or vessel, and shall make oath or affirmation showing that such new master is a citizen of the United States, and the manner in which, or means whereby, he is so a citizen; whereupon the said collector shall indorse upon the said certificate of registry a memorandum of such change, specifying the name of such new master, and shall subscribe the said memorandum with his name; and, if other than the collector of the district by whom the said certificate of registry shall have been granted, shall transmit a copy of the said memorandum to him, with notice of the particular ship or vessel to which it shall relate; and the collector of the district by whom the said certificate shall have been granted, shall make a like memorandum of such change in his book of registers, and shall transmit a copy thereof to the register of the treasury. And if the said change shall not be reported, or if the said oath or affirmation shall not be taken, as above directed, the registry of such ship or vessel shall be void, and the said master, or person having the charge or command of her, shall forfeit and pay the sum of one hundred dollars.

SEC. 16. That if any ship or vessel heretofore registered, or which shall hereafter be registered, as a ship or vessel of the United States, shall be sold or transferred in whole, or in part, by way of trust, confidence, or otherwise, to a subject or citizen of any foreign prince or state, and such sale or transfer shall not

be made known in manner hereinbefore directed, such ship or vessel, together with her tackle, apparel, and furniture, shall be forfeited: *Provided*, That if such ship or vessel shall be owned in part only, and it shall be made to appear to the jury, before whom the trial for such forfeiture shall be had, that any other owner of such ship or vessel, being a citizen of the United States, was wholly ignorant of the sale or transfer to, or ownership of, such foreign subject or citizen, the share or interest of such citizen of the United States shall not be subject to such forfeiture, and the residue only shall be so forfeited.

SEC. 17. That upon the entry of every ship or vessel of the United States from any foreign port or place, if the same shall be at the port or place at which the owner, or any of the part-owners, reside, such owner, or part-owner, shall make oath or affirmation, that the register of such ship or vessel contains the name or names of all the persons who are then owners of the said ship or vessel; or, if any part of such ship or vessel has been sold or transferred, since the granting of such register, that such is the case, and that no foreign subject or citizen hath, to the best of his knowledge and belief, any share, by the way of trust, confidence, or otherwise, in such ship or vessel. And if the owner, or any part-owner, shall not reside at the port or place at which such ship or vessel shall enter, then the master or commander shall make oath or affirmation to the like effect. And if the owner, or part-owner, where there is one, or the master or commander, where there is no owner, shall refuse to swear or affirm as aforesaid, such ship or vessel shall not be entitled to the privileges of a ship or vessel of the United States.

SEC. 18. That in all cases where the master, commander, or owner of a ship or vessel, shall deliver up the register of such ship or vessel, agreeably to the provisions of this act, if to the collector of the district where the same shall have been granted, the said collector shall, thereupon, cancel the bond, which shall have been given at the time of granting such register; or, if to the collector of any other district, such collector shall grant to

the said master, commander, or owner, a receipt or acknowledgement, that such register has been delivered to him, and the time when; and, upon such receipt being produced to the collector by whom the register was granted, he shall cancel the bond of the party, as if the register had been returned to him.

SEC. 19. That the collector of each district shall progressively number the certificates of the registry by him granted, beginning anew at the commencement of each year, and shall enter an exact copy of each certificate in a book to be kept for that purpose; and shall, once in three months, transmit to the register of the treasury, copies of all the certificates which shall have been granted by him, including the number of each.

SEC. 20. That every ship or vessel built in the United States, after the fifteenth day of August, one thousand seven hundred and eighty-nine, and belonging wholly, or in part, to the subjects of foreign powers, in order to be entitled to the benefits of a ship built and recorded in the United States, shall be recorded in the office of the collector of the district in which such ship or vessel was built, in manner following, that is to say: The builder of every such ship or vessel shall make oath or affirmation, before the collector of such district, who is hereby authorized to administer the same, in manner following: "I, [inserting here the name of such builder], of [inserting here the place of his residence], shipwright, do swear [or affirm], that [describing here the kind of vessel, as, whether ship, brig, snow, schooner, sloop, or whatever else], named [inserting here the name of the ship or vessel], having [inserting here the number of decks], and being in length [inserting here the number of feet], in breadth [inserting here the number of feet], in depth [inserting here the number of feet], and measuring [inserting here the number of tons], having [specifying whether any or no] gallery, and [also specifying whether any or no] head, was built by me, or under my direction, at [naming the place, county, and state], in the United States, in the year [inserting here the number of the year];" which oath or affirmation shall be subscribed by the person making the same, and

shall be recorded in a book, to be kept by the said collector for that purpose.

SEC. 21. That the said collector shall cause the said ship or vessel to be surveyed, or admeasured, according to the rule prescribed by the forty-third section of the act, entitled, "An Act to provide more effectually for the Collection of the Duties imposed by Law on Goods, Wares, and Merchandise, imported into the United States, and on the Tonnage of Ships or Vessels;" and the person, by whom such admeasurement shall be made, shall grant a certificate thereof, as in the case of a ship or vessel to be registered; which certificate shall be countersigned by the said builder, and by an owner, or the master, or the person having command or charge thereof, or by some other person, being an agent for the owner or owners thereof, in testimony of the truth of the particulars therein contained.

SEC. 22. That a certificate of the said record, attested under the hand and seal of the said collector, shall be granted to the master of every such ship or vessel, as nearly as may be, of the form following: "In pursuance of an act, entitled 'An Act concerning the Registering and Recording of Ships or Vessels,' I, [inserting here the name of the collector of the district], of [inserting here the name of the district], in the United States, do certify, that, [inserting here the name of the builder], of [inserting here the place of his residence, county, and state], having sworn, or affirmed, that the [describing the ship or vessel, as in the certificate of record], named [inserting here her name], whereof [inserting here the name of the master] is at present master, was built at [inserting here the name of the place, county, and state, where built], by him, or under his direction, in the year [inserting here the number of the year], and [inserting here the name of the surveyor, or other person, by whom the same admeasurement shall have been made] having certified that the said ship or vessel has [inserting here her number of decks], is in length [inserting here the number of feet], in breadth [inserting here the number of feet], in depth [inserting here the number

of feet], and measures [inserting here the number of tons]; and the said builder and [naming and describing the owner or master, or agent for the owner or owners, as the case may be, by whom the said certificate shall have been countersigned] having agreed to the said description and admeasurement, the said ship or vessel has been recorded in the district of [inserting here the name of the district where recorded], in the United States: Witness my hand and seal, this [inserting here the day of the month], day of [inserting here the name of the month], in the year [inserting here the number of the year]:” which certificate shall be recorded in the office of the said collector, and a duplicate thereof transmitted to the register of the treasury of the United States, to be recorded in his office.

SEC. 23. That if the master, or the name, of any ship or vessel so recorded, shall be changed, the owner, part-owner, or consignee of such ship or vessel, shall cause a memorandum thereof to be indorsed on the certificate of the record, by the collector of the district where such ship or vessel may be, or at which she shall first arrive, if such change took place in a foreign country; and a copy thereof shall be entered in the book of records, a transcript whereof shall be transmitted by the said collector, to the collector of the district where such certificate was granted (if not the same person), who shall enter the same in his book of records, and forward a duplicate of such entry to the register of the treasury of the United States; and in such case, until the said owner, part-owner, or consignee shall cause the said memorandum to be made by the collector, in manner aforesaid, such ship or vessel shall not be deemed or considered as a vessel recorded in pursuance of this act.

SEC. 24. That the master, or other person having the command or charge of any ship or vessel, recorded in pursuance of this act, shall, on entry of such ship or vessel, produce the certificate of such record to the collector of the district where she shall be so entered; on failure of which, the said ship or vessel shall not be entitled to the privileges of a vessel recorded as

aforesaid: *Provided, always, and be it further enacted,* That nothing herein contained shall be construed to make it necessary to record a second time any ship or vessel which shall have been recorded pursuant to the act hereby in part repealed; but such recording shall be of the like force and effect as if made pursuant to this act.

SEC. 25. That the fees and allowances, for the several services to be performed pursuant to this act, and the distribution of the same, shall be as follows, to wit: For the admeasurement of every ship or vessel of one hundred tons and under, one cent per ton; for the admeasurement of every ship or vessel above one hundred and not exceeding two hundred tons, one hundred and fifty cents; for the admeasurement of every ship or vessel above two hundred tons, two hundred cents; for every certificate of registry or record, two hundred cents; for every indorsement upon a certificate of registry or record, one hundred cents; and for taking every bond required by this act, twenty-five cents. The whole amount of which fees shall be received and accounted for by the collector, or, at his option, by the naval officer, where there is one; and, where there is a collector, naval officer, and surveyor, shall be equally divided, monthly, between the said officers; and where there is no naval officer, two-thirds to the collector, and the other third to the surveyor; and where there is only a collector, he shall receive the whole amount thereof; and where there is more than one surveyor in any district, each of them shall receive his proportionable part of such fees as shall arise in the port for which he is appointed: *Provided, always,* That in all cases where the tonnage of any ship or vessel shall be ascertained by any person appointed for that purpose, such person shall be paid a reasonable compensation therefor, out of the fees aforesaid, before any distribution thereof, as aforesaid. And every collector, and naval officer, and every surveyor who shall reside at a port where there is no collector, shall cause to be affixed, and constantly kept, in some conspicuous part of his office, a fair table of the rates of fees demandable by this act.

SEC. 26. That every collector, or officer, who shall knowingly make, or be concerned in making, any false register or record, or shall knowingly grant, or be concerned in granting, any false certificate of registry or record, of or for any ship or vessel, or other false document whatsoever, touching the same, contrary to the true intent and meaning of this act, who shall designedly take any other or greater fees, than are by this act allowed, or who shall receive any voluntary reward or gratuity, for any of the services performed pursuant thereto; and every surveyor, or other person appointed to measure any ship or vessel, who shall willfully deliver to any collector, or naval officer, a false description of such ship or vessel, to be registered or recorded, shall, upon conviction of any such neglect or offense, forfeit the sum of one thousand dollars, and be rendered incapable of serving in any office of trust or profit under the United States; and if any person or persons, authorized and required by this act, in respect to his or their office or offices, to perform any act or thing required to be done or performed pursuant to any of the provisions of this act, shall willfully neglect to do or perform the same, according to the true intent and meaning of this act, such person or persons shall, on being duly convicted thereof, if not subject to the penalty and disqualification aforesaid, forfeit the sum of five hundred dollars for the first offense, and a like sum for the second offense, and shall, thenceforth, be rendered incapable of holding any office of trust or profit under the United States.

SEC. 27. That if any certificate of registry or record shall be fraudulently or knowingly used for any ship or vessel not then actually entitled to the benefit thereof, according to the true intent of this act, such ship or vessel shall be forfeited to the United States, with her tackle, apparel, and furniture.

SEC. 28. That if any person or persons shall falsely make oath or affirmation to any of the matters herein required to be verified, such person or persons shall suffer the like pains and penalties as shall be incurred by persons committing willful and

corrupt perjury; and that if any person or persons shall forge, counterfeit, erase, alter, or falsify any certificate, register, record, or other document mentioned, described, or authorized in and by this act, such person or persons shall, for every such offense, forfeit the sum of five hundred dollars.

SEC. 29. That all the penalties and forfeitures which may be incurred for offenses against this act shall and may be sued for, prosecuted, and recovered, in such courts, and be disposed of in such manner, as any penalties and forfeitures which may be incurred for offenses against the act, entitled "An Act to provide more effectually for the Collection of the Duties imposed by Law on Goods, Wares, and Merchandise imported into the United States, and on the Tonnage of Ships or Vessels," may legally be sued for, prosecuted, recovered, and disposed of: *Provided, always,* That if any officer entitled to a part or share of any such penalty or forfeiture, such officer may be a witness upon the third trial; but, in such case, he shall not receive, nor be entitled to, any part or share of the said penalty or forfeiture; and the part or share, to which he would otherwise have been entitled, shall accrue to the United States.

SEC. 30. That from and after the last day of March next, this act shall be in full force and effect; and so much of the act, entitled "An Act for Registering and Clearing Vessels, Regulating the Coasting Trade, and for other Purposes," as comes within the purview of this act, shall, after the said last day of March, be repealed.

(*Approved December 31, 1792.*)

(293.)

ACT OF 1797, CHAP. 61.

An Act in Addition to an Act, entitled "An Act concerning the Registering and Recording of Ships or Vessels," and to an Act, entitled "An Act for Enrolling and Licensing Ships or Vessels to be employed in the Coasting Trade and Fisheries, and for Regulating the same."

SEC. 1. *Be it enacted, etc.,* That, whenever it shall appear, by satisfactory proof, to the secretary of the treasury, that any ship or vessel hath been sold and transferred by process of law, and that the register, certificate of enrollment, or license, as the case may be, of such ship or vessel is retained by the former owners, it shall be lawful for the said secretary to order and direct the collector of the district to which such ship or vessel may belong, to grant a new register, certificate of enrollment, or license, as the case may be, on the owners, under such sale, complying with such terms and conditions as are by law required for granting of such papers; excepting only the delivering up of the former certificate of registry, enrollment, or license, as the case may be: *Provided, nevertheless,* That nothing in this act contained shall be construed to remove the liability of any person or persons to any penalty for not surrendering up the papers belonging to any ship or vessel, or a transfer or sale of the same.

(Approved March 2, 1797.)

(294.)

ACT OF 1803, CHAP. 71.

An Act in Addition to an Act, entitled "An Act concerning the Registering and Recording of Ships and Vessels of the United States," and to the Act entitled "An Act to Regulate the Collection of Duties on Imports and Tonnage."

SEC. 1. *Be it enacted, etc.,* That, if any person shall knowingly make, utter, or publish any false sea-letter, Mediterranean passport, or certificate of registry, or shall knowingly avail himself of any such Mediterranean passport, sea-letter, or certificate of registry, he shall forfeit and pay a sum not exceeding five thousand dollars, to be recovered by an action of debt, in the name of the United States, in any court of competent jurisdiction; and, if an officer of the United States, he shall forever thereafter be rendered incapable of holding any office of trust or profit under the authority of the United States.

SEC. 2. That it shall be the duty of the comptroller of the treasury to cause to be provided blank certificates of registry, with such water and other secret marks as he may direct, which marks shall be made known only to the collectors and their deputies, and to the consuls or commercial agents of the United States; and, from and after the thirty-first day of December next, no certificate of registry shall be issued, except such as shall have been provided and marked as aforesaid; and the ships or vessels of the United States, which shall have been duly registered as such, shall be entitled to new certificates of registry (*gratis*) in exchange for their old certificates of registry; and it shall be the duty of the respective collectors, on the departure of any such ship or vessel, after the said thirty-first day of Decem-

ber, from the district to which such ship or vessel shall belong, to issue a new certificate accordingly, and to retain and deface the former certificate.

SEC. 3. That when any ship or vessel, which has been, or which shall be, registered, pursuant to any law of the United States, shall, whilst such ship or vessel is without the limits of the United States, be sold or transferred, in whole or in part, to a citizen or citizens of the United States, such ship or vessel, on her first arrival in the United States thereafter, shall be entitled to all the privileges and benefits of a ship or vessel of the United States: *Provided*, That all the requisites of law, in order to the registry of ships or vessels, shall be complied with, and a new certificate of registry obtained for such ship or vessel, within three days from the time at which the master, or other person having charge or command of such ship or vessel, is required to make his final report upon her first arrival afterwards, as aforesaid, agreeably to the thirtieth section of the act passed on the second day of March, one thousand seven hundred and ninety-nine, entitled "An Act to Regulate the Collection of Duties on Imports and Tonnage." And it shall be lawful to pay to the collector of the district within which such ship or vessel may arrive, as aforesaid, the duties imposed by law on the tonnage of such ship or vessel, at any time within three days from the time at which the master, or other person having the charge or command of such ship or vessel, is required to make his final report as aforesaid, anything to the contrary in any former law notwithstanding: *Provided, always*, That nothing herein contained shall be construed to repeal, or in any wise change, the provisions, restrictions, or limitations of any former act or acts, excepting so far as the same shall be repugnant to the provisions of this act.

SEC. 4. That the power vested in the secretary of the treasury to remove disabilities incurred under the act to which this is a supplement, and under the act entitled "An Act for Enrolling and Licensing Ships or Vessels, to be employed in the Coasting Trade

and Fisheries, and for regulating the same," shall extend to the remission of any foreign duties which shall have been or shall be incurred by reason of such disabilities.

(Approved March 2, 1803.)

(295).

ACT OF 1804, CHAP. 52.

An Act to amend an Act, entitled "An Act concerning the Registering and Recording of Ships or Vessels."

SEC. 1. *Be it enacted, etc.*, That no ship or vessel shall be entitled to be registered as a ship or vessel of the United States, or, if registered, to the benefits thereof, if owned in whole or in part by any person naturalized in the United States, and residing for more than one year in the country from which he originated, or for more than two years in any foreign country, unless such person be in the capacity of a consul, or other public agent of the United States: *Provided*, That nothing herein contained shall be construed to prevent the registering anew of any ship or vessel before registered, in case of a *bona fide* sale thereof to any citizen or citizens resident in the United States: *And provided, also*, That satisfactory proof of the citizenship of the person on whose account a vessel may be purchased, shall be first exhibited to the collector, before a new register shall be granted for such vessel.

SEC. 2. That the proviso in the act, entitled "An Act in Addition to an Act, entitled 'An Act concerning the Registering and Recording of Ships and Vessels,'" passed the twenty-seventh of June, one thousand seven hundred and ninety-seven, shall be taken and deemed to extend to the executors or administrators of the owner or owners of vessels in the said proviso described.

(Approved March 27, 1804.)

(296.)

ACT OF 1793, CHAP. 52.

An Act for enrolling and licensing Ships or Vessels to be employed in the Coasting Trade and Fisheries, and for regulating the same.

SEC. 1. *Be it enacted, etc.*, That ships or vessels, enrolled by virtue of "An Act for Registering and Clearing Vessels, Regulating the Coasting Trade, and for other Purposes," and those of twenty tons and upwards, which shall be enrolled after the last day of May next, in pursuance of this act, and having a license in force, if less than twenty tons, not being enrolled, shall have a license in force, as is hereinafter required, and no others shall be deemed ships or vessels of the United States, entitled to the privileges of ships or vessels employed in the coasting trade or fisheries.

SEC. 2. That, from and after the last day of May next, in order for the enrollment of any ship or vessel, she shall possess the same qualifications, and the same requisites, in all respects, shall be complied with, as are made necessary for registering ships or vessels, by the act, entitled "An Act concerning the Registering or Recording of Ships or Vessels," and the same duties and authorities are hereby given and imposed on all officers, respectively, in relation to such enrollments, and the same proceedings shall be had, in similar cases, touching such enrollments; and the ships or vessels so enrolled, with the master, or owner or owners thereof, shall be subject to the same requisites as are, in those respects, provided for vessels registered by virtue of the aforesaid act; the record of which enrollment shall be made, and an abstract or copy thereof granted, as nearly as may be, in

the form following: "Enrollment, in conformity to an Act of Congress of the United States of America, entitled 'An Act for Enrolling and Licensing Ships or Vessels to be employed in the Coasting Trade and Fisheries, and for Regulating the same,' [inserting here the name of the person, with his occupation and place of abode, by whom the oath or affirmation is to be made] having taken and subscribed the oath [or affirmation] required by this act, and having sworn [or affirmed] that he [or she, and if more than one owner, adding the words 'together with,' and the name or names, occupation or occupations, place or places of abode, of the owner or owners] is [or are] a citizen [or citizens] of the United States, and sole owner [or owners] of the ship or vessel called the [inserting here her name], of [inserting here the name of the port to which she may belong], whereof [inserting here the name of the master] is at present master, and is a citizen of the United States, and that the said ship or vessel was [inserting here when and where built], and [inserting here the name and office, if any, of the person by whom she shall have been surveyed or admeasured] having certified that the said ship or vessel has [inserting here the number of decks] and [inserting here the number of masts], and that her length is [inserting here the number of feet], her breadth [inserting here the number of feet], her depth [inserting here the number of feet], and that she measures [inserting here the number of tons], that she is [describing here the particular kind of vessel, whether ship, brigantine, snow, schooner, sloop, or whatever else, together with her built, and specifying whether she has any or no gallery or head], and the said [naming the owner or the master, or the person acting in behalf of the owner or owners, by whom the certificate of admeasurement shall have been countersigned] having agreed to the description and admeasurement above specified, and sufficient security having been given, according to the said act, the said ship or vessel has been duly enrolled at the port of [naming the port where enrolled]. Given under my hand and seal, at [naming the said port], this [inserting the particular day]

day of [naming the month], in the year [specifying the number of the year, in words at length]."

SEC. 3. That it shall and may be lawful for the collectors of the several districts to enroll and license any ship or vessel that may be registered, upon such registry being given up, or to register any ship or vessel that may be enrolled, upon such enrollment and license being given up. And when any ship or vessel shall be in any other district, than the one to which she belongs, the collector of such district, on the application of the master or commander thereof, and upon his taking an oath or affirmation, that, according to his best knowledge and belief, the property remains as expressed in the register or enrollment proposed to be given up, and, upon his giving the bonds required for granting registers, shall make the exchange aforesaid; but in every such case, the collector to whom the register, or enrollment and license, may be given up, shall transmit the same to the register of the treasury; and the register, or enrollment and license, granted in lieu thereof, shall, within ten days after the arrival of such ship or vessel within the district to which she belongs, be delivered to the collector of the said district, and be by him canceled. And if the said master or commander shall neglect to deliver the said register, or enrollment and license, within the time aforesaid, he shall forfeit one hundred dollars.

SEC. 4. That, in order to the licensing of any ship or vessel for carrying on the coasting trade or fisheries, the husband, or managing owner, together with the master thereof, with one or more sureties, to the satisfaction of the collector granting the same, shall become bound to pay to the United States, if such ship or vessel be of the burden of five tons, and less than twenty tons, the sum of one hundred dollars; and if twenty tons, and not exceeding thirty tons, the sum of two hundred dollars; and if above thirty tons, and not exceeding sixty tons, the sum of five hundred dollars; and if above sixty tons, the sum of one thousand dollars, in case it shall appear, within two years from the date of the bond, that such ship or vessel has been employed

in any trade, whereby the revenue of the United States has been defrauded, during the time the license granted to such ship or vessel remained in force; and the master of such ship or vessel shall also swear or affirm that he is a citizen of the United States, and that such license shall not be used for any other vessel, or any other employment, than that for which it is specially granted, or in any other trade or business whereby the revenue of the United States may be defrauded; and if such ship or vessel be less than twenty tons burden, the husband, or managing owner, shall swear or affirm, that she is wholly the property of a citizen or citizens of the United States; whereupon it shall be the duty of the collector of the district, comprehending the port whereto such ship or vessel may belong (the duty of six cents per ton being first paid), to grant a license, in the form following: "License for carrying on the [here insert coasting trade, whale fishery, or cod fishery, as the case may be].

"In pursuance of an act of the Congress of the United States of America, entitled 'An Act for Enrolling and Licensing Ships or Vessels to be employed in the Coasting Trade and Fisheries, and for regulating the same,' [inserting here the name of the husband or managing owner, with his occupation and place of abode, and the name of the master, with his place of abode] having given bond that the [insert here the description of the vessel, whether ship, brigantine, snow, schooner, sloop, or whatever else she may be], called the [insert here the vessel's name], whereof the said [naming the master], is master, burden [inserting here the number of tons, in words,] tons, as appears by her enrollment, dated at [naming the district, day, month, and year, in words, at length], [but if she be less than twenty tons insert instead thereof], proof being had of her admeasurement, shall not be employed in any trade, while this license shall continue in force, whereby the revenue of the United States shall be defrauded; and having also sworn (or affirmed) that this license shall not be used for any other vessel, or for any other employment, than is herein specified, license is hereby granted

for the said [inserting here the description of the vessel], called the [insert here the vessel's name], to be employed in carrying on the [insert here coasting-trade, whale-fishery, or cod-fishery, as the case may be], for one year from the date hereof, and no longer. Given under my hand and seal, at [naming the said district], this [inserting the particular day] day of [naming the month], in the year [specifying the number of the year, in words, at length]."

SEC. 5. That no license granted to any ship or vessel shall be considered in force any longer than such ship or vessel is owned, and of the description set forth in such license, or for carrying on any other business or employment than that for which she is specially licensed; and if any ship or vessel be found with a forged or altered license, or making use of a license granted for any other ship or vessel, such ship or vessel, with her tackle, apparel, and the cargo found on board her, shall be forfeited.

SEC. 6. That, after the last day of May next, every ship or vessel of twenty tons or upwards (other than such as are registered), found trading between district and district, or between different places in the same district, or carrying on the fishery without being enrolled or licensed; or, if less than twenty tons, and not less than five tons, without a license, in manner as is provided by this act, such ship or vessel, if laden with goods the growth or manufacture of the United States only (distilled spirits only excepted), or in ballast, shall pay the same fees and tonnage in every port of the United States at which she may arrive, as ships or vessels not belonging to a citizen or citizens of the United States; and if she have on board any articles of foreign growth or manufacture, or distilled spirits, other than sea-stores, the ship or vessel, together with her tackle, apparel, and furniture, and the lading found on board shall be forfeited: *Provided*, however, if such ship or vessel be at sea, at the expiration of the time for which the license was given, and the master of such ship or vessel shall swear or affirm that such was the case, and shall, also, within forty-eight hours after his arrival, deliver to

the collector of the district in which he shall first arrive, the license which shall have expired, the forfeiture aforesaid shall not be incurred, nor shall the ship or vessel be liable to pay the fees and tonnage aforesaid.

SEC. 7. That the collector of each district shall progressively number the licenses by him granted, beginning anew at the commencement of each year, and shall make a record thereof in a book, to be by him kept for that purpose, and shall, once in three months, transmit to the register of the treasury, copies of the licenses which shall have been so granted by him; and also of such licenses as shall have been given up or returned to him, respectively, in pursuance of this act. And where any ship or vessel shall be licensed or enrolled anew, or, being licensed or enrolled, shall afterwards be registered, or, being registered, shall afterwards be enrolled or licensed, she shall, in every such case, be enrolled, licensed, or registered by her former name.

SEC. 8. That if any ship or vessel, enrolled or licensed as aforesaid, shall proceed on a foreign voyage without first giving up her enrollment and license to the collector of the district comprehending the port from which she is about to proceed on such foreign voyage, and being duly registered by such collector, every such ship or vessel, together with her tackle, apparel, and furniture, and the goods, wares, and merchandise, so imported therein, shall be liable to seizure and forfeiture: *Provided, always,* if the port, from which such ship or vessel is about to proceed on such foreign voyage, be not within the district where such ship or vessel is enrolled, the collector of such district shall give to the master of such ship or vessel a certificate, specifying that the enrollment and license of such ship or vessel is received by him, and the time when it was so received; which certificate shall afterwards be delivered by the said master to the collector who may have granted such enrollment and license.

SEC. 9. That the license granted to any ship or vessel shall be given up to the collector of the district who may have granted the same, within three days after the expiration of the time for

which it was granted, in case such ship or vessel be then within the district; or, if she be absent at that time, within three days from her first arrival within the district afterwards; or, if she be sold out of the district, within three days after the arrival of the master within any district to the collector of such district, taking his certificate therefor; and if the master thereof shall neglect or refuse to deliver up the license as aforesaid, he shall forfeit fifty dollars; but if such license shall have been previously given up to the collector of any other district, as authorized by this act, and a certificate thereof, under the hand of such collector, be produced by such master, or if such license be lost, or destroyed, or unintentionally mislaid, so that it cannot be found, and the master of such ship or vessel shall make and subscribe an oath or affirmation that such license is lost, destroyed, or unintentionally mislaid, as he verily believes, and that the same, if found, shall be delivered up, as is herein required, then the aforesaid penalty shall not be incurred. And if such license shall be lost, destroyed, or unintentionally mislaid, as aforesaid, before the expiration of the time for which it was granted, upon the like oath or affirmation being made and subscribed by the master of such ship or vessel, the said collector is hereby authorized and required, upon application being made therefor, to license such ship or vessel anew.

SEC. 10. That it shall and may be lawful for the owner or owners of any licensed ship or vessel to return such license to the collector who granted the same, at any time within the year for which it was granted, who shall, thereupon, cancel the same, and shall license such vessel anew, upon the application of the owner or owners, and upon the conditions hereinbefore required being complied with; and in case the term for which the former license was granted shall not be expired, an abatement of the tonnage of six cents per ton shall be made, in proportion of the time so unexpired.

SEC. 11. That every licensed ship or vessel shall have her name, and the port to which she belongs, painted on her stern,

in the manner as is provided for registered ships or vessels, and if any licensed ship or vessel be found without such painting, the owner or owners thereof shall pay twenty dollars.

SEC. 12. That when the master of any licensed ship or vessel, ferry-boats excepted, shall be changed, the new master, or in case of his absence, the owner, or one of the owners thereof, shall report such change to the collector residing at the port where the same may happen, if there be one, otherwise to the collector residing at any port where such ship or vessel may next arrive, who, upon the oath or affirmation of such new master, or in case of his absence, of the owner, or one of the owners, that he is a citizen of the United States, and that such ship or vessel shall not, while such license continues in force, be employed in any manner whereby the revenue of the United States may be defrauded, shall indorse such change on the license, with the name of the new master; and, when any change shall happen, as aforesaid, and such change shall not be reported and the indorsement made of such change, as is herein required, such ship or vessel, found carrying on the coasting trade or fisheries, shall be subject to pay the same fees and tonnage as a vessel of the United States having a register, and the said new master shall forfeit and pay the sum of ten dollars.

SEC. 13. That it shall be lawful at all times for any officer concerned in the collection of the revenue to inspect the enrollment or license of any ship or vessel; and if the master of any such ship or vessel shall not exhibit the same, when thereunto required by such officer, he shall pay one hundred dollars.

SEC. 14. That the master or commander of every ship or vessel licensed for carrying on the coasting trade, destined from a district in one state to a district in the same, or an adjoining state, on the seacoast, or on a navigable river, having on board either distilled spirits, in casks, exceeding five hundred gallons; wine, in casks, exceeding two hundred and fifty gallons, or in bottles, exceeding one hundred dozens; sugar, in casks or boxes, exceeding three thousand pounds; tea, in chests or boxes, exceed-

ing five hundred pounds; coffee, in casks or bags, exceeding one thousand pounds; or foreign merchandise, in packages, as imported, exceeding in value four hundred dollars; or goods, wares, or merchandise, consisting of such enumerated, or other articles of foreign growth or manufacture, or of both, whose aggregate value exceeds eight hundred dollars, shall, previous to the departure of such ship or vessel from the port where she may then be, make out and subscribe duplicate manifests of the whole of such cargo on board such ship or vessel, specifying in such manifests the marks and numbers of every cask, bag, box, chest, or package containing the same, with the name and place of residence of every shipper and consignee, and the quantity shipped by and to each, and if there be a collector or surveyor residing at such port, or within five miles thereof, he shall deliver such manifests to the collector, if there be one, otherwise to the surveyor, before whom he shall swear or affirm, to the best of his knowledge and belief, that the goods therein contained were legally imported, and the duties thereupon paid and secured, or, if spirits distilled within the United States, that the duties thereupon have been paid or secured; whereupon the said collector or surveyor shall certify the same on the said manifests, one of which he shall return to the said master, with a permit, specifying thereon, generally, the lading on board such ship or vessel, and authorizing him to proceed to the port of his destination. And, if any ship or vessel, being laden and destined as aforesaid, shall depart from the port where she may then be, without the master or commander having first made out and subscribed duplicate manifests of the lading on board such ship or vessel, and, in case there be a collector or surveyor residing at such port, or within five miles thereof, without having previously delivered the same to the said collector or surveyor, and obtaining a permit, in manner as is herein required, such master or commander shall pay one hundred dollars.

Sec. 15. That the master or commander of every ship or vessel licensed for carrying on the coasting trade, having on board

either distilled spirits, in casks, exceeding five hundred gallons; wine, in casks, exceeding two hundred and fifty gallons, or in bottles, exceeding one hundred dozens; sugar, in casks or boxes, exceeding three thousand pounds; tea, in chests or boxes, exceeding five hundred pounds; coffee, in casks or bags, exceeding one thousand pounds; or foreign merchandise, in packages, as imported, exceeding in value four hundred dollars; or goods, wares, or merchandise, consisting of such enumerated or other articles of foreign growth or manufacture, or of both, whose aggregate value exceeds eight hundred dollars, and arriving from a district in one State, at a district in the same, or an adjoining State, on the sea-coast, or on a navigable river, shall, previous to the unloading of any part of the cargo of such ship or vessel, deliver to the collector, if there be one, or, if not, to the surveyor, residing at the port of her arrival, or, if there be no collector or surveyor residing at such port, then to the collector or surveyor, if there be any such officer, residing within five miles thereof, the manifest of the cargo, certified by the collector or surveyor of the district from whence she sailed (if there be such manifest), otherwise the duplicate manifests thereof, as hereinbefore directed, to the truth of which, before such officer he shall swear or affirm. And, if there have been taken on board such ship or vessel, any other or more goods than are contained in such manifest or manifests, since her departure from the port from whence she first sailed, or if any goods have been since landed, the said master or commander shall make known and particularize the same to the said collector, or surveyor, or if no such goods have been so taken on board or landed, he shall so declare, to the truth of which he shall swear or affirm; whereupon, the said collector or surveyor shall grant a permit for unloading a part, or the whole, of such cargo, as the said master or commander may request. And if there be no collector or surveyor residing at, or within five miles of, the said port of her arrival, the master or commander of such ship or vessel may proceed to discharge the lading from on board such ship or vessel, but shall deliver to

the collector or surveyor, residing at the first port where he may next afterwards arrive, and within twenty-four hours of his arrival, the manifest or manifests aforesaid, noting thereon the times when, and places where, the goods therein mentioned have been unladen, to the truth of which, before the last-mentioned collector or surveyor, he shall swear or affirm; and if the master or commander of any such ship or vessel, being laden as aforesaid, shall neglect or refuse to deliver the manifest or manifests, at the times, and in the manner, herein directed, he shall pay one hundred dollars.

SEC. 16. That the master or commander of every ship or vessel licensed for carrying on the coasting trade, and being destined from any district of the United States to a district other than a district in the same or an adjoining State, on the ~~sea~~-coast, or on a navigable river, shall, previous to her departure, deliver to the collector residing at the port where such ship or vessel may be, if there is one, otherwise to the collector of the district comprehending such port, or to a surveyor within the district, as the one or the other may reside nearest the port at which such ship or vessel may be, duplicate manifests of the whole cargo on board such ship or vessel; or, if there be no cargo on board, he shall so certify; and if there be any distilled spirits, or goods, wares, and merchandise, of foreign growth or manufacture, on board, other than what may, by the collector, be deemed sufficient for sea-stores, he shall specify in such manifests the marks and numbers of every cask, bag, box, chest, or package, containing the same, with the name and place of residence of every shipper and consignee of such distilled spirits or goods of foreign growth or manufacture, and the quantity shipped by and to each, to be by him subscribed, and to the truth of which he shall swear or affirm; and he shall also swear or affirm, before the said collector or surveyor, that such goods, wares, or merchandise of foreign growth or manufacture were, to the best of his knowledge and belief, legally imported, and the duties thereupon paid or secured; or, if spirits be distilled within the United

States, that the duties thereupon have been duly paid or secured, upon the performance of which, and not before, the said collector or surveyor shall certify the same on the said manifests, one of which he shall return to the master, with a permit thereto annexed, authorizing him to proceed to the port of his destination. And if any such ship or vessel shall depart from the port where she may then be, having distilled spirits, or goods, wares, or merchandise, of foreign growth or manufacture, on board, without the several things herein required being complied with, the master thereof shall forfeit one hundred dollars; or, if the lading be of goods the growth and manufacture of the United States only, or if such ship or vessel have no cargo, and she depart without the several things herein required being complied with, the said master shall forfeit and pay fifty dollars.

SEC. 17. That the master or commander of every ship or vessel, licensed to carry on the coasting trade, arriving at any district of the United States, from any district other than a district in the same or an adjoining State on the sea-coast, or on a navigable river, shall deliver to the collector residing at the port where she may arrive, if there be one, otherwise to the collector or surveyor in the district comprehending such port, as the one or the other may reside nearest thereto, if the collector or surveyor reside at a distance not exceeding five miles, within twenty-four hours, or, if at a greater distance, within forty-eight hours, next after his arrival, and previous to the unlading any of the goods brought in such ship or vessel, the manifest of the cargo, if there be any, certified by the collector or surveyor of the district from whence she last sailed; and shall make oath or affirmation before the said collector or surveyor that there was not, when he sailed from the district where his manifest was certified, or has been since, or then is, any more or other goods, wares, or merchandise, of foreign growth or manufacture, or distilled spirits (if there be any, other than sea-stores, on board such vessel), than is therein mentioned; and if there be no such goods, he shall so swear or affirm; and if there be no cargo on board, he

shall produce the certificate of the collector or surveyor of the district from whence she last sailed, as aforesaid, that such is the case; whereupon such collector or surveyor shall grant a permit for unlading the whole or a part of such cargo, if there be any, within his district, as the master may request; and where a part only of the goods, wares, and merchandise of foreign growth or manufacture, or of distilled spirits, brought in such ship or vessel, is intended to be landed, the said collector or surveyor shall make an indorsement of such part on the back of the manifest, specifying the articles to be landed; and shall return such manifest to the master, indorsing also thereon his permission for such ship or vessel to proceed to the place of her destination; and if the master of such ship or vessel shall neglect or refuse to deliver the manifest (or, if she has no cargo, the certificate), within the time herein directed, he shall forfeit one hundred dollars; and the goods, wares, and merchandise, of foreign growth or manufacture, or distilled spirits found on board, or landed from such ship or vessel, not being certified as is herein required, shall be forfeited; and if the same shall amount to the value of eight hundred dollars, such ship or vessel, with her tackle, apparel, and furniture, shall be also forfeited.

SEC. 18. That nothing in this act contained shall be so construed as to oblige the master or commander of any ship or vessel, licensed for carrying on the coasting trade, bound from a district in one State to a district in the same, or an adjoining State, on the sea-coast, or on a navigable river, having on board goods, wares, or merchandise, of the growth, product, or manufactures of the United States only (except distilled spirits), or distilled spirits not more than five hundred gallons; wine, in casks, not more than two hundred and fifty gallons; or in bottles, not more than one hundred dozens; sugar, in casks or boxes, not more than three thousand pounds; tea, in chests or boxes, not more than five hundred pounds; coffee, in casks or bags, not more than one thousand pounds; or foreign merchandise, in packages, as imported, of not more value than four hundred dollars; or goods,

wares, or merchandise, consisting of such enumerated or other articles of foreign growth or manufacture, or of both, whose aggregate value shall be not more than eight hundred dollars, to deliver a manifest thereof, or obtain a permit, previous to her departure, or, on her arrival within such district, to make any report thereof; but such master shall be provided with a manifest, by him subscribed, of the lading of what kind soever, which was on board such ship or vessel at the time of his departure from the district from which she last sailed; and if the same, or any part of such lading, consists of distilled spirits, or goods, wares, or merchandise, of foreign growth or manufacture, with the marks and numbers of each cask, bag, box, chest, or package, containing the same, with the name of the shipper and consignee of each, which manifest shall be by him exhibited for the inspection of any officer of the revenue, when, by such officer thereunto required; and shall also inform such officer from whence such ship or vessel last sailed, and how long she has been in port, when by him so interrogated. And if the master of such ship or vessel shall not be provided on his arrival within any such district with a manifest, and exhibit the same as is herein required, if the lading of such ship or vessel consist wholly of goods, the produce or manufacture of the United States (distilled spirits excepted), he shall forfeit twenty dollars; or, if there be distilled spirits, or goods, wares, or merchandise, of foreign growth or manufacture, on board, excepting what may be sufficient for sea-stores, he shall forfeit forty dollars; or, if he shall refuse to answer the interrogatories truly, as is herein required, he shall forfeit the sum of one hundred dollars. And if any of the goods laden on board such ship or vessel shall be of foreign growth or manufacture, or of spirits distilled within the United States, so much of the same as may be found on board such ship or vessel, and which shall not be included in the manifest exhibited by such master, shall be forfeited.

SEC. 19. That it shall and may be lawful for the collector of the district of Pennsylvania to grant permits for the transporta-

tion of goods, wares, or merchandise, of foreign growth or manufacture, across the State of New Jersey, to the district of New York, or across the State of Delaware, to any district in the State of Maryland or Virginia; and for the collector of the district of New York to grant like permits, for the transportation across the State of New Jersey; and for the collector of any district of Maryland or Virginia, to grant like permits for the transportation across the State of Delaware, to the district of Pennsylvania: *Provided*, That every such permit shall express the name of the owner or person sending such goods, and of the person or persons to whom such goods shall be consigned, with the marks, numbers, and description of the packages, whether bale, box, chest, or otherwise, and the kind of goods contained therein, and the date when granted; and the owner or person sending such goods, shall swear or affirm that they were legally imported, and the duties thereupon paid or secured: *And provided, also*, That the owner or consignee of all such goods, wares, and merchandise shall, within twenty-four hours after the arrival thereof at the place to which they were permitted to be transported, report the same to the collector of the district where they shall so arrive, and shall deliver up the permit accompanying the same; and if the owner or consignee aforesaid shall neglect or refuse to make due entry of such goods, within the time and in manner herein directed, all such goods, wares, and merchandise shall be subject to forfeiture; and if the permit granted shall not be given up within the time limited for making the said report, the person or persons to whom it was granted, neglecting or refusing to deliver it up, shall forfeit fifty dollars for every twenty-four hours it shall be withheld afterwards: *Provided*, That, where goods, wares, and merchandise, to be transported in manner aforesaid, shall be of less value than eight hundred dollars, the said oath and permit shall not be deemed necessary, nor shall the owner or consignee be obliged to make report to the collector of the district where the said goods, wares, and merchandise shall arrive.

SEC. 20. That when any ship or vessel of the United States, registered according to law, shall be employed in going from any one district in the United States to any other district, such ship or vessel, and the master or commander thereof, with the goods she may have on board, previous to her departure from the district where she may be, and also upon her arrival in any other district, shall be subject (except as to the payment of fees) to the same regulations, provisions, penalties, and forfeitures, and the like duties are imposed on like officers, as is provided by the sixteenth and seventeenth sections of this act, for ships or vessels licensed for carrying on the coasting trade: *Provided, however,* That nothing herein contained shall be construed to extend to registered ships or vessels of the United States, having on board goods, wares, and merchandise, of foreign growth or manufacture, brought into the United States in such ship or vessel from a foreign port, and on which the duties have not been paid or secured according to law.

SEC. 21. That when any ship or vessel, licensed for carrying on the fishery, shall be intended to touch and trade at any foreign port or place, it shall be the duty of the master, commander, or owner, to obtain permission for that purpose from the collector of the district where such ship or vessel may be, previous to her departure; and the master or commander of every such ship or vessel shall deliver like manifests, and make like entries, both of the ship or vessel, and of the goods, wares, or merchandise on board, within the same time, and under the same penalty, as by the laws of the United States are provided for ships or vessels of the United States arriving from a foreign port. And if any ship or vessel, licensed for carrying on the fisheries, shall be found within three leagues of the coast, with goods, wares, or merchandise, of foreign growth or manufacture, exceeding the value of five hundred dollars, without having such permission as is herein directed, such ship or vessel, together with the goods, wares, or merchandise, of foreign growth or manufacture, imported therein, shall be subject to seizure and forfeiture.

SEC. 22. That the master or commander of every ship or vessel, employed in the transportation of goods from district to district, that shall put into a port other than the one to which she was bound, shall, within twenty-four hours of his arrival, if there be an officer residing at such port, and she continue there so long, make report of his arrival to such officer, with the name of the place he came from, and to which he is bound, with an account of his lading; and if the master of such ship or vessel shall neglect or refuse to do the same, he shall forfeit twenty dollars.

SEC. 23. That if the master or commander of any ship or vessel, employed in the transportation of goods from district to district, having on board goods, wares, or merchandise, of foreign growth or manufacture, or distilled spirits, shall, on his arrival at the port to which he was destined, have lost or mislaid the certified manifest of the same, or the permit which was given therefor by the collector or surveyor of the district from which he sailed, the collector of the district where he shall so arrive shall take bond for the payment of the duties on such goods, wares, and merchandise, of foreign growth or manufacture, or distilled spirits, within six months, in the same manner as though they were imported from a foreign country: *Provided, however,* such bond shall be canceled, if the said master shall deliver, or cause to be delivered, to the collector taking such bond, and within the term therein limited for payment, a certificate from the collector or surveyor of the district from whence he sailed, that such goods were legally exported in such ship or vessel, from such district.

SEC. 24. That the master or commander of every foreign ship or vessel, bound from a district in the United States to any other district within the same, shall, in all cases, previous to her departure from such district, deliver to the collector of such district duplicate manifests of the lading on board such ship or vessel, if there be any; or, if there be none, he shall declare that such is the case, and to the truth of such manifests or

declaration he shall swear or affirm, and also obtain a permit from the said collector, authorizing him to proceed to the place of his destination. And the master or commander of every such ship or vessel, on his arrival within any district, from any other district, shall, in all cases, within forty-eight hours after his arrival, and previous to the unlading any goods from on board such ship or vessel, deliver to the collector of the district where he may have arrived, a manifest of the goods laden on board such ship or vessel, if any there be, or, if in ballast only, he shall so declare, and to the truth of which manifest or declaration he shall swear or affirm; and also that such manifest contains an account of all the goods, wares, and merchandise which were on board such ship or vessel at the time, or have been since her departure from the place from whence she shall be reported last to have sailed; and he shall also deliver to such collector the permit which was given him from the collector of the district from whence he sailed. And if the master or commander of any such ship or vessel shall neglect or refuse complying with any of the requirements herein made, he shall forfeit one hundred dollars: *Provided, always,* That nothing herein contained shall be construed as affecting the payment of tonnage, or any other requirements which such ships or vessels are now subject to by the present existing laws of the United States.

SEC. 25. That, in every case where the collector is, by this act, directed to grant any enrollment, license, certificate, permit, or other document, the naval officer residing at the port (if there be one) shall sign the same; and every surveyor who shall certify a manifest, or grant a permit, or who shall receive any certified manifest, or a permit, as is provided for in this act, shall make monthly returns thereof, or sooner, if it can conveniently be made, to the collector of the district where such surveyor may reside.

SEC. 26. That, before any ship or vessel, of the burden of five tons and less than twenty tons, shall be licensed, the same admeasurement shall be made of such ship or vessel, and the

same provisions observed relative thereto, as are to be observed in case of admeasuring ships or vessels to be registered or enrolled; but in all cases where such ship or vessel, or any other licensed ship or vessel, shall have been once admeasured, it shall not be necessary to measure such ship or vessel anew, for the purpose of obtaining another enrollment or license, except such ship or vessel shall have undergone some alteration, as to her burden, subsequent to the time of her former license.

SEC. 27. That it shall be lawful for any officer of the revenue to go on board of any ship or vessel, whether she shall be within or without his district, and the same to inspect, search, and examine, and, if it shall appear that any breach of the laws of the United States has been committed, whereby such ship or vessel, or the goods, wares, and merchandise on board, or any part thereof, is or are liable to forfeiture, to make seizure of the same.

SEC. 28. That, in every case where a forfeiture of any ship or vessel, or of any goods, wares, or merchandise, shall accrue, it shall be the duty of the collector, or other proper officer, who shall give notice of the seizure of such ship or vessel, or of such goods, wares, or merchandise, to insert in the same advertisement the name or names, and the place or places of residence, of the person or persons to whom any such ship or vessel, goods, wares, and merchandise belonged, or were consigned, at the time of such seizure, if the same shall be known to him.

SEC. 29. That every collector, who shall knowingly make any record of enrollment or license of any ship or vessel, and every other officer, or person appointed by or under them, who shall make any record, or grant any certificate, or other document whatever, contrary to the true intent and meaning of this act, or shall take any other or greater fees than are by this act allowed, or shall receive, for any service performed pursuant to this act, any reward or gratuity; and every surveyor, or other person appointed to measure ships or vessels, who shall willfully deliver to any collector or naval officer, a false description of any ship

or vessel, to be enrolled or licensed in pursuance of this act, shall, upon conviction of any such neglect or offense, forfeit to the United States five hundred dollars, and be rendered incapable of serving in any office of trust or profit under the United States. And if any person authorized and required by this act, in respect to his office, to perform any act or thing required by this act, shall willfully neglect or refuse to do and perform the same, according to the true intent and meaning of this act, such person, on being duly convicted thereof, if not hereby subject to the penalty and disqualifications aforesaid, shall forfeit and pay the sum of five hundred dollars for the first offense, and a like sum for the second offense, and shall, from thenceforward, be rendered incapable of holding any office of trust or profit under the United States.

SEC. 30. That if any person or persons shall swear or affirm to any of the matters herein required to be verified, knowing the same to be false, such person or persons shall suffer the like pains and penalties as shall be incurred by persons committing willful and corrupt perjury. And if any person or persons shall forge, counterfeit, erase, alter, or falsify any enrollment, license, certificate, permit, or other document, mentioned or required in this act, to be granted by any officer of the revenue, such person or persons so offending shall forfeit five hundred dollars.

SEC. 31. That if any person or persons shall assault, resist, obstruct, or hinder any officer in the execution of this act, or of any other act or law of the United States, herein mentioned, or of any of the powers or authorities vested in him by this act, or any other act or law, as aforesaid, all and every person or persons so offending shall, for every such offense, for which no other penalty is particularly provided, forfeit five hundred dollars.

SEC. 32. That if any licensed ship or vessel shall be transferred, in whole or in part, to any person who is not at the time of such transfer a citizen of, and resident within, the United States, or, if any such ship or vessel shall be employed in any other trade

than that for which she is licensed, or shall be found with a forged or altered license, or one granted for any other ship or vessel, every such ship or vessel, with her tackle, apparel, and furniture, and the cargo found on board her, shall be forfeited.

SEC. 33. *Provided, etc.*, That in all cases where the whole or any part of the lading or cargo, on board any ship or vessel, shall belong, *bona fide*, to any person or persons other than the master, owner, or mariners of such ship or vessel, and upon which the duties shall have been previously paid or secured, according to law, shall be exempted from any forfeiture under this act, anything therein contained to the contrary notwithstanding.

SEC. 34. That the fees and allowances, for the several duties and services to be performed in virtue of this act, shall be as follow; that is to say: For admeasuring every ship or vessel, in order to the enrollment, or licensing and recording the same, if of the burden of five tons and less than twenty tons, fifty cents; if of twenty tons, and not exceeding seventy tons, seventy-five cents; if above seventy tons, and not exceeding one hundred tons, one hundred cents; if above one hundred tons, one hundred and fifty cents. For every certificate of enrollment, fifty cents. For every indorsement on a certificate of enrollment, twenty cents. For every license, and granting the same, including the bond, if not exceeding twenty tons, twenty-five cents; if above twenty, and not more than one hundred tons, fifty cents; and if more than one hundred tons, one hundred cents. For every indorsement on a license, twenty cents. For certifying manifests, and granting a permit for a licensed vessel to proceed from district to district, twenty-five cents, if less than fifty tons; and if above fifty tons, fifty cents. For receiving a certified manifest, and granting a permit, on the arrival of such vessel, twenty-five cents, if less than fifty tons; and if above fifty tons, fifty cents. For certifying manifests, and granting a permit for a registered vessel to proceed from district to district, one hundred and fifty cents. For receiving a certified manifest, and granting a permit,

on the arrival of such registered vessel, one hundred and fifty cents. For granting a permit for a vessel, not belonging to a citizen or citizens of the United States, to proceed from district to district, and receiving the manifest, two hundred cents. For receiving a manifest, and granting a permit to unload, for such last-mentioned vessel, on her arrival in one district from another district, two hundred cents. For granting a permit for a vessel carrying on the fishery, to trade at a foreign port, twenty-five cents. And for the report and entry of any foreign goods imported in such vessel, twenty-five cents.

And where a surveyor shall certify a manifest, or grant a permit, or receive a certified manifest and grant a permit, the fees arising therefrom shall be received by him solely for his use. And all other fees, arising by virtue of this act, shall be received, and accounted for, by the collector, or, at his option, by the naval officer, where there is one, and where there is a collector, naval officer, and surveyor, shall be equally divided, monthly, between the said officers; and where there is no naval officer, two-thirds to the collector, and the other third to the surveyor; and where there is only a collector, he shall receive the whole amount thereof; and where there is more than one surveyor in any district, each of them shall receive his proportionable part of such fees as shall arise in the port for which he is appointed. *Provided, always,* That in all cases where the tonnage of any ship or vessel shall be ascertained by any person appointed for that purpose, such person shall be paid a reasonable compensation therefor, out of the fees aforesaid, before any distribution thereof as aforesaid; and every collector, and naval officer, and every surveyor who shall reside at a port where there is no collector, shall cause to be affixed and constantly kept in some conspicuous place of his office, a fair table of the rates of fees demandable by this act.

SEC. 35. That all penalties and forfeitures, which shall be incurred by virtue and force of this act, shall and may be sued for, prosecuted, and recovered, in like manner as penalties and

forfeitures incurred by virtue of the act, entitled "An Act to Regulate the Collection of the Duties imposed by Law on Goods, Wares, and Merchandise imported into the United States, and on the Tonnage of Ships or Vessels," may be sued for, prosecuted, and recovered, and shall be appropriated in like manner: *Provided, always*, That if any officer, entitled to a part or share of any such penalty or forfeiture, shall be necessary as a witness on the trial for such penalty or forfeiture, such officer may be a witness upon the said trial; but, in such case, he shall not receive, or be entitled to, any part or share of the said penalty or forfeiture; and the part or share to which he would otherwise have been entitled, shall accrue to the United States.

SEC. 36. That this act shall commence and take effect from and after the last day of May next; and, thenceforth, the act, entitled "An Act Registering and Clearing Vessels, Regulating the Coasting-trade, and for other purposes," and also the act, entitled "An Act to explain and amend an Act, entitled 'An Act for Registering and Clearing Vessels, Regulating the Coasting-trade, and for other purposes,'" shall be repealed, and cease to operate, except as to the validity of the registers, records, enrollments, and licenses, with the certificates and documents which shall have been done or granted in pursuance of those acts, prior to the first day of June next, which shall continue to be of the like force and effect as if the said acts were not repealed; and except, also, as to the prosecution, recovery and distribution of and for fines, penalties, and forfeitures, which may have been incurred prior to the first day of June next, for which purpose, likewise, the said acts shall continue in force.

SEC. 37. That nothing in this act shall be construed to extend to any boat or lighter, not being masted, or, if masted and not decked, employed in the harbor of any town or city.

(Approved February 18, 1793.)

(297.)

ACT OF 1819, CHAP. 172.

*An Act Supplementary to the Acts concerning the
Coasting-Trade.*

SEC. 1. *Be it enacted, etc.*, That, for the more convenient regulation of the coasting-trade, the sea-coast and navigable rivers of the United States be, and hereby are, divided into two great districts; the first to include all the districts on the sea-coast, and navigable rivers, between the eastern limits of the United States and the southern limits of Georgia; and the second to include all the districts on the sea-coast and navigable rivers between the river Perdido and the western limits of the United States.

SEC. 2. That every ship or vessel, of the burden of twenty tons or upwards, licensed to trade between the different districts of the United States, shall be and is hereby authorized to carry on such trade between the districts included within the aforesaid great districts respectively, and between a State in one, and an adjoining State in another, great district, in manner and subject only to the regulations that are now by law required to be observed by such ships or vessels, in trading from one district to another in the same State, or from a district in one State to a district in the next adjoining State, anything in any law to the contrary notwithstanding.

SEC. 3. That every ship or vessel, of the burden of twenty tons or upwards, licensed to trade as aforesaid, shall be, and is hereby required, in trading from one to another great district, other than between a State in one and an adjoining State in another great district, to conform to and observe the regulations that, at the time of passing this act, are required to be observed

by such vessels, in trading from a district in one State to a district in any other than an adjoining State.

SEC. 4. That the trade between the districts, not included in either of the two great districts aforesaid, shall continue to be carried on in the manner, and subject to the regulations, already provided for this purpose

SEC. 5. That this act shall commence and be in force from and after the thirtieth day of June next after the passing thereof.

(Approved March 2, 1819.)

(298.)

ACT OF 1817, CHAP. 204.

An Act Concerning the Navigation of the United States.

SEC. 1. *Be it enacted, etc.,* That, after the thirteenth day of September next, no goods, wares, or merchandise shall be imported into the United States from any foreign port or place, except in vessels of the United States, or in such foreign vessels as truly and wholly belong to the citizens or subjects of that country of which the goods are the growth, production, or manufacture, or from which such goods, wares, or merchandise can only be, or most usually are, first shipped for transportation: *Provided, nevertheless,* That this regulation shall not extend to the vessel of any foreign nation which has not adopted, and which shall not adopt, a similar regulation.

SEC. 2. That all goods, wares, or merchandise, imported into the United States contrary to the true intent and meaning of this act, and the ship or vessel wherein the same shall be imported, together with her cargo, tackle, apparel, and furniture, shall be forfeited to the United States; and such goods, wares, or merchandise, ship or vessel, and cargo, shall be liable to be seized, prosecuted, and condemned, in like manner, and under the same regulations, restrictions, and provisions as have been heretofore established for the recovery, collection, distribution, and remission of forfeitures to the United States by the several revenue laws.

SEC. 3. That, after the thirtieth day of September next, the bounties and allowances now granted by law to the owners of boats or vessels engaged in the fisheries, shall be paid only on

boats or vessels, the officers and at least three-fourths of the crews of which shall be proved, to the satisfaction of the collector of the district where such boat or vessel shall belong, to be citizens of the United States, or persons not the subjects of any foreign prince or State.

SEC. 4. That no goods, wares, or merchandise shall be imported, under penalty of forfeiture thereof, from one port of the United States to another port of the United States, in a vessel belonging wholly or in part to a subject of any foreign power; but this clause shall not be construed to prohibit the sailing of any foreign vessel from one to another port of the United States, provided no goods, wares, or merchandise, other than those imported in such vessel from some foreign port, and which shall not have been unladen, shall be carried from one port or place to another in the United States.

SEC. 5. That after the thirtieth day of September next, there shall be paid a duty of fifty cents per ton upon every ship or vessel of the United States which shall be entered in a district in one State from a district in another State, except it be an adjoining State on the sea-coast, or on a navigable river or lake, and except also it be a coasting-vessel, going from Long Island, in the State of New York, to the State of Rhode Island, or from the State of Rhode Island to the said Long Island, having on board goods, wares, and merchandise, taken in one State to be delivered in another State: *Provided*, That it shall not be paid on any ship or vessel having a license to trade between the different districts of the United States, or to carry on the Bank or whale fisheries, more than once a year: *And provided, also*, That if the owner of any such vessel, or his agent, shall prove to the satisfaction of the collector, that three-fourths at least of the crew thereof are American citizens, or persons not the subjects of any foreign prince or State, the duty to be paid in such case shall be only at the rate of six cents per ton; but nothing in this section shall be construed to repeal or effect any exemption from tonnage-duty given by the eighth section of the act, entitled "An Act to Pro-

vide for the Establishment of Certain Districts, and therein to amend An Act, entitled 'An Act to Regulate the Collection of Duties on Imports and Tonnage, and for other Purposes.'"

SEC. 6. That after the thirtieth day of September next, there shall be paid upon every ship or vessel of the United States, which shall be entered in the United States from any foreign port or place, unless the officers and at least two-thirds of the crew thereof shall be proved citizens of the United States, or persons not the subjects of any foreign prince or State, to the satisfaction of the collector, fifty cents per ton: *And provided, also,* That this section shall not extend to ships or vessels of the United States which are now on foreign voyages, or which may depart from the United States prior to the first day of May next, until after their return to some port of the United States.

SEC. 7. That the several bounties and remissions, or abatements of duty, allowed by this act, in the cases of vessels having a certain proportion of seamen who are American citizens, or persons not the subjects of any foreign power, shall be allowed only in the case of vessels having such proportion of American seamen during their whole voyage, unless in case of sickness, death, or desertion, or where the whole or part of the crew shall have been taken prisoners in the voyage.

(*Approved March 1, 1817.*)

(299.)

ACT OF 1790, CHAP. 56.

An Act for the Government and Regulation of Seamen in the Merchants' Service.

SEC. 1. *Be it enacted, etc.,* That, from and after the first day of December next, every master or commander of any ship or vessel, bound from a port of the United States to any foreign port, or of any ship or vessel of the burden of fifty tons or upwards, bound from a port in one State to a port in any other than an adjoining State, shall, before he proceed on such voyage, make an agreement, in writing or in print, with every seaman or mariner on board such ship or vessel (except such as shall be apprentice or servant to himself or owners), declaring the voyage or voyages, term or terms of time for which such seaman or mariner shall be shipped. And if any master or commander of such ship or vessel shall carry out any seaman or mariner (except apprentices or servants as aforesaid) without such contract or agreement being first made and signed by the seamen and mariners, such master or commander shall pay to every such seaman or mariner the highest price or wages which shall have been given at the port or place where such seaman or mariner shall have been shipped, for a similar voyage, within three months next before the time of such shipping: *Provided*, Such seaman or mariner shall perform such voyage; or, if not, then for such time as he shall continue to do duty on board such ship or vessel; and shall, moreover, forfeit twenty dollars for every such seaman or mariner, one half to the use of the person prosecuting for the same, the other half to the use of the United States; and such seaman or mariner, not having signed such contract, shall not

be bound by the regulations, nor subject to the penalties and forfeitures contained in this act.

SEC. 2. That, at the foot of every such contract, there shall be a memorandum in writing, of the day and the hour on which such seaman or mariner, who shall so ship and subscribe, shall render themselves on board, to begin the voyage agreed upon. And if any such seaman or mariner shall neglect to render himself on board the ship or vessel for which he has shipped, at the time mentioned in such memorandum, and if the master, commander, or other officer of the ship or vessel, shall, on the day on which such neglect happened, make an entry on the log-book of such ship or vessel of the name of such seaman or mariner, and shall, in like manner, note the time that he so neglected to render himself (after the time appointed), every such seaman or mariner shall forfeit, for every hour which he shall so neglect to render himself, one day's pay, according to the rate of wages agreed upon, to be deducted out of his wages. And if any such seaman or mariner shall wholly neglect to render himself on board of such ship or vessel, or, having rendered himself on board, shall afterwards desert and escape, so that the ship or vessel proceed to sea without him, every such seaman or mariner shall forfeit and pay to the master, owner, or consignee of the said ship or vessel, a sum equal to that which shall have been paid to him by advance, at the time of signing the contract, over and besides the sum so advanced, both which sums shall be recoverable in any court, or before any justice or justices of any State, city, town, or county, within the United States, which, by the laws thereof, have cognizance of debts of equal value, against such seaman or mariner, or his surety or sureties, in case he shall have given surety to proceed on the voyage.

SEC. 3. That if the mate, or first officer under the master, and a majority of the crew of any ship or vessel, bound on a voyage to any foreign port, shall, after the voyage is begun, and before the ship or vessel shall have left the land, discover that the said ship or vessel is too leaky, or is otherwise unfit in her crew,

body, tackle, apparel, furniture, provisions, or stores, to proceed on the intended voyage, and shall require such unfitness to be inquired into, the master or commander shall, upon the request of the said mate, or other officer, and such majority, forthwith proceed to, or stop at, the nearest or most convenient port or place where such inquiry can be made, and shall there apply to the judge of the district court, if he shall there reside, or, if not, to some justice of the peace of the city, town, or place, taking with him two or more of the said crew, who shall have made such request; and, thereupon, such judge or justice is hereby authorized and required to issue his precept, directed to three persons in the neighborhood, the most skillful in maritime affairs that can be procured, requiring them to repair on board such ship or vessel, and to examine the same, in respect to the defects and insufficiencies complained of, and to make report to him, the said judge or justice, in writing, under their hands, or the hands of two of them, whether in any, or in what respect, the said ship or vessel is unfit to proceed on the intended voyage, and what addition of men, provisions, or stores, or what repairs, or alterations in the body, tackle, or apparel, will be necessary; and, upon such report, the said judge or justice shall adjudge and determine, and shall indorse on the said report his judgment, whether the said ship or vessel is fit to proceed on the intended voyage; and, if not, whether such repairs can be made, or deficiencies supplied, where the ship or vessel then lays, or whether it be necessary for the said ship or vessel to return to the port from whence she first sailed, to be there refitted; and the master and crew shall, in all things, conform to the said judgment; and the master or commander shall, in the first instance, pay all the costs of such view, report, and judgment, to be taxed and allowed on a fair copy thereof, certified by the said judge or justice. But if the complaint of the said crew shall appear, upon the said report and judgment, to have been without foundation, then the said master, or the owner or consignee of such ship or vessel, shall deduct the amount thereof, and of reasonable damages for

the detention (to be ascertained by the said judge or justice), out of the wages growing due to the complaining seamen, or mariners. And if, after such judgment, such ship or vessel is fit to proceed on her intended voyage, or, after procuring such men, provisions, stores, repairs, or alterations, as may be directed, the said seamen or mariners, or either of them, shall refuse to proceed on the voyage, it shall and may be lawful for any justice of the peace to commit, by warrant under his hand and seal, every such seaman or mariner, who shall so refuse, to the common jail of the county, there to remain, without bail or mainprise, until he shall have paid double the sum advanced to him at the time of subscribing the contract for the voyage, together with such reasonable costs as shall be allowed by the said justice, and inserted in the said warrant, and the surety or sureties of such seaman or mariner, in case he or they shall have given any, shall remain liable for such payment; nor shall any such seaman or mariner, be discharged upon any writ of *habeas corpus*, or otherwise, until such sum be paid by him or them, or his or their surety or sureties, for want of any form of commitment, or other previous proceedings: *Provided*, That sufficient matter shall be made to appear, upon the return of such *habeas corpus*, and an examination then to be had, to detain him for the causes hereinbefore assigned.

SEC. 4. That if any person shall harbor or secrete any seaman or mariner, belonging to any ship or vessel, knowing them to belong thereto, every such person, on conviction thereof, before any court in the city, town, or county, where he, she, or they may reside, shall forfeit and pay ten dollars for every day which he, she, or they shall continue so to harbor or secrete such seaman or mariner; one half to the use of the person prosecuting for the same, the other half to the use of the United States; and no sum exceeding one dollar shall be recoverable from any seaman or mariner by any one person, for any debt contracted during the time such seaman or mariner shall actually belong to any ship or vessel, until the voyage for which such seaman or mariner engaged shall be ended.

SEC. 5. That if any seaman or mariner, who shall have subscribed such contract as is hereinbefore described, shall absent himself from on board the ship or vessel in which he shall have so shipped, without leave of the master or officer commanding on board, and the mate, or other officer having charge of the log-book, shall make an entry therein of the name of such seaman or mariner, on the day on which he shall so absent himself, and if such seaman or mariner shall return to his duty within forty-eight hours, such seaman or mariner shall forfeit three days' pay for every day which he shall so absent himself, to be deducted out of his wages; but if any seaman or mariner shall absent himself for more than forty-eight hours at one time, he shall forfeit all the wages due to him, and all his goods and chattels which were on board the said ship or vessel, or in any store where they may have been lodged at the time of his desertion, to the use of the owners of the ship or vessel, and, moreover, shall be liable to pay to him or them all damages which he or they may sustain, by being obliged to hire other seamen or mariners in his or their place; and such damages shall be recovered, with costs, in any court, or before any justice or justices having jurisdiction of the recovery of debts, to the value of ten dollars or upwards.

SEC. 6. That every seaman or mariner shall be entitled to demand and receive, from the master or commander of the ship or vessel to which they belong, one-third part of the wages which shall be due to him, at every port where such ship or vessel shall unlade and deliver her cargo before the voyage be ended, unless the contrary be expressly stipulated in the contract; and as soon as the voyage is ended, and the cargo or ballast be fully discharged at the last port of delivery, every seaman or mariner shall be entitled to the wages which shall be then due, according to his contract; and if such wages shall not be paid within ten days after such discharge, or if any dispute shall arise between the master and seamen or mariners, touching the said wages, it shall be lawful for the judge of the district where the said ship or vessel shall be, or, in case his residence be more than three

miles from the place, or of his absence from the place of his residence, then, for any judge or justice of the peace, to summon the master of such ship or vessel to appear before him, to show cause why process should not issue against such ship or vessel, her tackle, furniture, and apparel, according to the course of admiralty courts, to answer for the said wages; and if the master shall neglect to appear, or, appearing, shall not show that the wages are paid, or otherwise satisfied, or forfeited, and if the matter in dispute shall not be forthwith settled, in such case, the judge or justice shall certify to the clerk of the court of the district, that there is sufficient cause of complaint whereon to found admiralty process, and thereupon the clerk of such court shall issue process against the said ship or vessel, and the suit shall be proceeded on in the said court, and final judgment be given, according to the course of admiralty courts in such cases used; and, in such suit, all the seamen or mariners (having cause of complaint of the like kind against the same ship or vessel) shall be joined as complainants; and it shall be incumbent on the master or commander to produce the contract and log-book if required, to ascertain any matters in dispute; otherwise, the complainant shall be permitted to state the contents thereof, and the proof of the contrary shall lie on the master or commander; but nothing herein contained shall prevent any seaman or mariner from having or maintaining any action at common law for the recovery of his wages, or from immediate process out of any court having admiralty jurisdiction, wherever any ship or vessel may be found, in case she shall have left the port of delivery where her voyage ended before payment of the wages, or in case she shall be about to proceed to sea before the end of the ten days next after the delivery of her cargo or ballast.

SEC. 7. That if any seaman or mariner, who shall have signed a contract to perform a voyage, shall, at any port or place, desert, or shall absent himself from such ship or vessel, without leave of the master, or officer commanding in the absence of the master, it shall be lawful for any justice of the peace within the

United States (upon the complaint of the master), to issue his warrant to apprehend such deserter, and bring him before such justice; and if it shall then appear, by due proof, that he has signed a contract within the intent and meaning of this act, and that the voyage agreed for is not finished, altered, or the contract otherwise dissolved, and that such seaman or mariner has deserted the ship or vessel, or absented himself without leave, the said justice shall commit him to the house of correction, or common jail of the city, town, or place, there to remain until the said ship or vessel shall be ready to proceed on her voyage, or till the master shall require his discharge, and then to be delivered to the said master, he paying all the cost of such commitment, and deducting the same out of the wages due to such seaman or mariner.

SEC. 8. That every ship or vessel, belonging to a citizen or citizens of the United States, of the burden of one hundred and fifty tons or upwards, navigated by ten or more persons in the whole, and bound on a voyage without the limits of the United States, shall be provided with a chest of medicines, put up by some apothecary of known reputation, and accompanied by directions for administering the same; and the said medicines shall be examined by the same or some other apothecary, once, at least, in every year, and supplied with fresh medicines in the place of such as shall have been used or spoiled; and, in default of having such medicine-chest so provided and kept for use, the master or commander of such vessel shall provide and pay for all such advice, medicine, or attendance of physicians as any of the crew shall stand in need of in case of sickness, at every port or place where the ship or vessel may touch or trade at during the voyage, without any deduction from the wages of such sick seaman or mariner.

SEC. 9. That every ship or vessel, belonging as aforesaid, bound on a voyage across the Atlantic Ocean, shall, at the time of leaving the last port from whence she sails, have on board, well secured under deck, at least sixty gallons of water, one

hundred pounds of salted flesh meat, and one hundred pounds of wholesome ship-bread for every person on board such ship or vessel, over and besides such other provisions, stores, and live stock as shall by the master or passengers be put on board, and in like proportion for shorter or longer voyages; and in case the crew of any ship or vessel, which shall not have been so provided shall be put upon short allowance, in water, flesh, or bread, during the voyage, the master or owner of such said ship or vessel shall pay, to each of the crew, one day's wages beyond the wages agreed on, for every day they shall be so put to short allowance, to be recovered in the same manner as their stipulated wages.

(Approved July 20, 1790.)

(300.)

ACT OF 1805, CHAP. 88.

An Act to amend the Act, entitled "An Act for the Government and Regulation of Seamen in the Merchants' Service."

SEC. 1. *Be it enacted, etc.,* That all the provisions, regulations, and penalties which are contained in the eighth section of the act, entitled "An Act for the Government and Regulation of Seamen in the Merchants' Service," so far as relates to a chest of medicines, to be provided for vessels of one hundred and fifty tons burden, and upwards, shall be extended to all merchant vessels of the burden of seventy-five tons, or upwards, navigated with six persons or more, in the whole, and bound from the United States to any port or ports in the West Indies.

(Approved March 2, 1805.)

(301.)

ACT OF 1847, CHAP. 16.

An Act to Regulate the Carriage of Passengers in Merchant Vessels.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That if the master of any vessel, owned in whole or in part by a citizen of the United States of America, or by a citizen of any foreign country, shall take on board such vessel, at any foreign port or place, a greater number of passengers than in the following proportion to the space occupied by them and appropriated for their use, and unoccupied by stores, or other goods, not being the personal luggage of such passengers—that is to say, on the lower deck or platform, one passenger for every fourteen clear, superficial feet of deck, if such vessel is not to pass within the tropics during such voyage; but if such vessel is to pass within the tropics during such voyage, then one passenger for every twenty such clear, superficial feet of deck, and on the orlop-deck (if any), one passenger for every thirty such superficial feet in all cases—with intent to bring such passengers to the United States of America, and shall leave such port or place with the same, and bring the same, or any number thereof within the jurisdiction of the United States aforesaid; or, if any such master of vessel shall take on board of his vessel, at any port or place within the jurisdiction of the United States aforesaid, any greater number of passengers than the proportions aforesaid admit, with intent to carry the same to any foreign port or place—every such master shall be deemed guilty of a misdemeanor, and, upon conviction thereof before any Circuit or District Court of the United States aforesaid, shall, for each passenger taken on board beyond the

above proportions, be fined in a sum of fifty dollars, and may also be imprisoned for any term not exceeding one year: *Provided*, That this act shall not be construed to permit any ship or vessel to carry more than two passengers to five tons of such ship or vessel.

SEC. 2. *And be it further enacted*, That if the passengers, so taken on board of such vessel, and brought into, or transported from, the United States aforesaid, shall exceed the number limited by the last section to the number of twenty in the whole, such vessel shall be forfeited to the United States aforesaid, and be prosecuted and distributed as forfeitures are under the act to regulate duties on imports and tonnage.

SEC. 3. *And be it further enacted*, That if any such vessel as aforesaid shall have more than two tier of berths, or, in case in such vessel the interval between the floor and the deck or platform beneath shall not be at least six inches, and the berths well constructed, or in case the dimensions of such berths shall not be at least six feet in length, and at least eighteen inches in width, for each passenger as aforesaid, then the master of said vessel, and the owners thereof, severally, shall forfeit and pay the sum of five dollars for each and every passenger on board of said vessel on such voyage, to be recovered by the United States as aforesaid, in any Circuit or District Court of the United States where such vessel may arrive, or from which she sails.

SEC. 4. *And be it further enacted*, That, for the purposes of this act, it shall in all cases be computed that two children, each being under the age of eight years, shall be equal to one passenger, and that children under the age of one year shall not be included in the computation of the number of passengers.

SEC. 5. *And be it further enacted*, That the amount of the several penalties imposed by this act shall be liens on the vessel or vessels violating its provisions; and such vessel may be libeled and sold therefor in the District Court of the United States aforesaid in which such vessel shall arrive.

(Approved February 22, 1847.)

(302.)

ACT OF 1845, CHAP. 20.

An Act Extending the Jurisdiction of the District Courts to Certain Cases upon the Lakes and Navigable Waters Connecting the same.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the District Courts of the United States shall have, possess, and exercise the same jurisdiction in matters of contract and tort, arising in, upon, or concerning steamboats and other vessels of twenty tons burden and upwards, enrolled and licensed for the coasting trade, and at the time employed in business of commerce and navigation between ports and places in different States and Territories upon the lakes and navigable waters connecting said lakes, as is now possessed and exercised by the said courts in cases of the like steamboats and other vessels employed in navigation and commerce upon the high seas, or tide-waters within the admiralty and maritime jurisdiction of the United States; and in all suits brought in such courts in all such matters of contract or tort, the remedies, and the forms of process, and the modes of proceeding, shall be the same as are or may be used by such courts in cases of admiralty and maritime jurisdiction; and the maritime law of the United States, so far as the same is or may be applicable thereto, shall constitute the rule of decision in such suits, in the same manner, and to the same extent, and with the same equities, as it now does in cases of admiralty and maritime jurisdiction; saving, however, to the parties the right of trial by jury of all facts put in issue in such suits where either party shall require it; and saving, also, to the parties the right of a concurrent remedy at the common law, where it is competen

to give it, and any concurrent remedy which may be given by the State laws, where such steamer or other vessel is employed in such business of commerce and navigation.

(Approved February 26, 1845.)

(303.)

ACT OF 1847, CHAP. 55.

An Act for the Reduction of the Costs and Expenses of Proceedings in Admiralty Against Ships and Vessels.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in any case brought in the courts of the United States, exercising jurisdiction in admiralty, where a warrant of arrest or other process in rem. shall be issued, it shall be the duty of the marshal to stay the execution of such process, or to discharge the property arrested if the same has been levied, on receiving from the claimant of the same a bond or stipulation in double the amount claimed by the libellant, with sufficient surety, to be approved by the judge of the said court, or, in his absence, by the collector of the port, conditioned to abide and answer the decree of the court in such cause; and such bond or stipulation shall be returned to the said court, and judgment on the same, both against the principal and sureties, may be recovered at the time of rendering the decree in the original cause: *Provided*, That the entire costs in any such case, in which the amount recovered by the libellant shall not exceed one hundred dollars, shall not be more than fifty per cent. of the amount recovered in the same, which costs shall be applied, first, to the payment of the usual fees for witnesses, and the commissioner, where a commissioner shall act on the case, and the residue to be divided *pro rata* between the clerk and marshal, under the direction of the judge of the court where the cause may be tried: *Provided, further*, That no attorney's or procutor's fees shall be allowed or paid out of the said costs.*

(Approved March 3, 1847.)

APPENDIX.

(304.)

AVERAGE BOND.

Whereas, The -----
whereof ----- Master,
having on board a cargo of merchandise, sailed from the port
of -----, bound
for -----, and, in the due
prosecution of her said voyage, [*here must be recited, clearly and
carefully, the facts and occurrences which gave rise to the general
average, in order to show that the sacrifice and expenses were for the
benefit of all concerned, and that the parties are liable, in point of
law, to contribute pro rata to the general average*], by which means
certain losses and expenses have been incurred, and other
expenses hereafter may be incurred in consequence thereof, which,
according to the usage of this port, constitute a general average,
to be apportioned on the said vessel, her earnings as freight, and
the cargo on board.

Now we, the subscribers, owners, shippers, consignees, agents,
or attorneys of certain consignees of said vessel or cargo, do
hereby, for ourselves, our executors, and administrators, severally
and respectively, but not jointly, or one for the other, covenant
and agree to, and with, -----
-----,
that the loss and damage aforesaid, and other incidental expenses

thereon, as shall be made to appear to be due from us, the subscribers to these presents, either as owners, shippers, consignees, agents, or attorneys of certain consignees of said Vessel or Cargo, shall be paid by us, respectively, according to our parts, or shares in the said Vessel, her earnings as Freight, and her said Cargo, as shall belong or be consigned to us, or shall belong, or be consigned to any person or persons with whom we are co-partners, agents, or attorneys, or in any manner concerned therein, provided such losses and expenses aforementioned be stated and apportioned by -----, Average Adjuster, in accordance with the ESTABLISHED USAGE AND LAWS OF THIS STATE in similar cases. And, for the true performance of all and singular in the premises, we do severally hereby bind ourselves, our respective heirs, executors, and administrators, to the said -----

-----,
in the penal sum of ----- Dollars
lawful money of the United States.*

In Witness whereof, We have to these presents set our hands, in the City of New York, this ----- day of -----
in the year of our Lord one thousand eight hundred and -----

Consignees.	No. of Packages.	Amount of Invoice.	Description.

(305.)

BOTTOMRY BOND.

(For Form of Bottomry Bond, vide No. 137.)

(306.)

RESPONDENTIA BOND.

Know all men by these presents, That we, A. B., commander of the ship M., in the service of C. D. and H. L., of -----, are held and firmly bound unto P. R., of -----, Merchant, in the sum of ----- dollars, good and lawful money of the United States of America, to be paid to the said P. R., or to his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, jointly and separately, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, dated this ----- day of -----, in the year of our Lord one thousand eight hundred and -----.

Whereas, The above-named P. R. has, on the day of the date above written, advanced and lent unto the said A. B. and H. L. the sum of ----- dollars, upon the goods and merchandise and effects laden and to be laden on board the good ship or vessel called the M., of the burden of ----- tons, or thereabouts, now riding at anchor in the river T., outward bound to C., and whereof A. B. is commander, by his acceptance of a bill of exchange to that amount at ----- months' date, for the account of them the said A. B. and H. L. Now THE CONDITION of this obligation is such, that if the said ship or vessel do, and with all convenient speed, proceed and sail from and out of the said river T., on a voyage to any port or place, ports or places in -----, and from thence do and shall sail, return, and come back into the said river T., at or before the expiration of ----- months, to be accounted from the day of the date above written, and there to end her said intended voyage (the dangers and casualties of the seas excepted); and if the said A. B. and H. L., or either of them, their or either of their executors

or administrators, do and shall within ----- days next after the said ship or vessel shall have arrived at her moorings in the said river T., from her said intended voyage, or at or upon the end and expiration of the said ----- months, to be accounted as aforesaid (which of the said times shall first and next happen), well and truly pay, or cause to be paid unto the said P. R., his executors, administrators, or assigns, the full sum of ----- dollars, lawful money of the United States of America, together with ----- dollars of like money per calendar month, for each and every calendar month, and so proportionably for a greater or lesser time than a calendar month, for all such time and so many calendar months as shall be elapsed and run out of the said ----- calendar months, over and above ----- months, to be accounted from the day of the date above written, or if during the said voyage, and within the said ----- calendar months to be accounted as aforesaid, an utter loss of the said ship or vessel by fire, enemies, men-of-war, or any other casualties, shall unavoidably happen, and the said A. B. and H. L., their heirs, executors, or administrators, do and shall, within ----- calendar months next after such loss, well and truly account for (upon oath, if required), and pay unto the said P. R., his executors, administrators, or assigns, a just and proportionable average on all the goods and effects of the said A. B. carried from the United States on board the said ship or vessel, and the net proceeds thereof, and on all other goods and effects which the said A. B. shall acquire during the said voyage, for, or by reason of, such goods, merchandise, and effects, and which shall not be unavoidably lost, then the above written obligation to be void and of no effect, else to stand in full force and virtue.

(307.)

Entry, or note of a Protest of a Ship.

STATE OF VIRGINIA, }
 City of Norfolk. }

Be it known, That on this 12th day of September, in the year of our Lord 1855, before me, F. B. D., a Notary Public, duly commissioned and sworn, under the authority of the State, and dwelling and practicing in the city of Norfolk aforesaid, personally came and appeared, A. B., master of the ship called the "Arrow," of New York, of the burden of 1,000 tons, or thereabouts, who declared that he sailed last from Mobile, on the fifteenth day of August, 1855, in the said vessel under his command, laden with a cargo of general goods, bound for Liverpool, and that [*here recite the nature of the disaster*]. And that he arrived at this port of Norfolk on the 11th September, 1856.

And, therefore, the said master thus notes his protest, before me, the said notary, reserving to himself the right of extending the same at time and place convenient.

A. B., <i>Master of Ship "Arrow."</i>	{	Verified before me, the day and year first above written. F. B. D., <i>Notary Public.</i>
--	---	---

(308.)

SHIP PROTEST (*common form*) in Consequence of
Loss or Damage by Storms and Tempestuous
Weather, and also by Jettison.

UNITED STATES OF AMERICA.

STATE OF VIRGINIA, }
City of Norfolk. }

To all whom these presents doth, shall, or may concern: I, F. B. D., of the City of Norfolk, in the State of Virginia, aforesaid, a Public Notary under the Great Seal of the State, commissioned and duly qualified, send greeting:

Know ye, that, on the twelfth day of September, in the year of our Lord one thousand eight hundred and fifty-five, before me, the said Notary, appeared A. B., Master of the ship "Arrow," of New York, of the burden of one thousand tons, or thereabouts, and noted in due form of law, with me, the said notary, his protest, for the uses and purposes hereafter mentioned. And now, at this day, to wit, the day of the date hereof, again comes the said A. B., before the said Notary, at Norfolk aforesaid, and requires me to extend his protest; and, together with the said A. B., also came C. D., mate, E. F., carpenter, G. H. and I. J., seamen, of and belonging to the said ship, all of whom being by me duly sworn on the Holy Evangelists of Almighty God, did severally declare and depose as follows: That is to say, that, on the fifteenth day of August, he, the said A. B., set sail and departed in and with the said ship "Arrow," as master thereof, from the port of Mobile, having on board the said ship a cargo of general goods, bound to Liverpool. That the said ship was then tight, staunch, and strong, had her cargo well and sufficiently stowed and secured, and was well masted, manned,

tackled, victualled, appareled, and appointed, and was, in every respect, fit for sea, and the voyage she was about to undertake. That, on the day of their departure, the breezes were moderate. That they proceeded on their voyage with fine weather and variable winds, accompanied, occasionally, with rain, until the 20th, when they had fresh gales from the northeast, and passing squalls, with a heavy sea running, and they shipped large quantities of water on deck, and over all parts of the ship, the vessel plunging the bowsprit end under water; at 12 M., got the bowsprit secured. On the 21st, they had fresh gales and squally weather, accompanied with rain, and a heavy sea running, the ship laboring very much, and every attention paid to the pumps. That they continued on their voyage with variable winds and cloudy weather, accompanied, occasionally, with rain, thunder, and lightning, but without any extraordinary occurrence until the 2nd September, when they had heavy gales from N.N.E., with a heavy sea running, and continually breaking over the vessel; same bad weather continued until midnight. On the 3rd, more moderate; but at 10 P. M. had strong gales from N.E. to N., the gales increasing. at 11 P. M., carried away the jib-sheet, and tore the sail nearly all to pieces before they could stow it. On the 4th, had more moderate weather, and proceeded on their voyage until the 7th, when they had strong winds, accompanied with rain; at 7.30 A. M., gale increased rapidly from the southward and eastward, which carried away their fore-topmast studding-sail-boom; at 9 A. M., heavy sea on; ship labored much, shipping large quantities of water on deck, the main-deck continually full of water, and they were trying the pumps every opportunity, and pumping every four hours. On the 8th, they had strong winds, with heavy squalls; at 8, double-reefed the fore-topsails, the sea getting up considerably; at 10, they had tremendous gales from the N.E., and a heavy sea broke on board, which carried away the long-boat and skiff, bulwark, rails, stanchions, and swept the decks of spars and various other articles; the pumps were instantly set on; at 11 P. M., had tremendous gusts, and a sea

broke into the starboard quarter-boat, and burst her; she was, necessarily, obliged to be cut away. That, during the course of the night, they were continually pumping; found the ship to make a great deal of water, and on getting a light forward, on the main-deck, in order to ascertain the extent of the damage, found the deck stove in very badly, and supposed it originated from the force of the boat, or spars going overboard; the water still gaining on them, they were obliged to continue at the pumps throughout the night; and they found several stanchions gone on the larboard side, and also all the oars, rudders, and everything belonging to the long-boat and skiff, which were lashed inside; also six water-casks, and six more from the decks, which were properly lashed; several spars were lost, which were partially washed over the side, and which they were obliged to throw away, not being able to get them in; the best main-top-mast studding-sail and all the studding-sail-yards were washed overboard, with all the studding-gear, and other ropes, and every light article about the decks, although everything had been securely lashed before the bad weather commenced. That the 9th commenced with heavy gales from the northward and eastward, the ship in the same state as on the preceding day; at daylight, no alteration; they cleared up what spars remained, and secured them; and, finding the ship straining exceedingly, the said A. B. consulted with his officers, and with the supercargo on board, and they found they were obliged, in order to lighten the ship, and for the safety and preservation of the vessel, crew, and rest of the cargo, to throw overboard part of the cargo, consisting of [*here describe the goods or articles voluntarily thrown overboard for the common benefit*], which was accordingly done. At noon, weather moderating, and being in latitude 33° 45', they adjudged it best, for the interest of all concerned, to bear up for a port for repairs; bore up for Norfolk, accordingly. On the 10th, light airs from the E.N.E. 11th, commenced with light breezes from the eastward; at 4 A. M., made land; at 9 A. M., took a pilot, and proceeded up towards Nor-

folk, where they arrived and anchored off the quarantine-ground, at 6 P. M. And this appearer, A. B., also declares that, on the following day, he appeared at the office of the said notary, and caused his protest to be noted. And the said appearers further say that, as all the damage and injury which has already or may hereafter appear to have happened or accrued to the said ship or her said cargo, has been occasioned solely by the circumstances hereinbefore stated, and cannot nor ought not to be attributed to any insufficiency of the said ship, or default of him, this deponent, his officers, or crew. He now requires me, the said notary, to make his protest and this public act thereof, that the same may serve and be of full force and value as of right shall appertain. And, therefore, the said A. B. doth protest, and I, the said notary, at his special instance and request, do, by these presents, publicly and solemnly protest against the aforesaid bad weather, gales, storms, accidents, and occurrences, and all loss or damage occasioned thereby, and against all persons whom it doth, shall, and may concern, and against all and every accident, matter, and thing had and met with as aforesaid, whereby, or by means whereof, the said ship or her cargo have received, or hereafter shall appear to have suffered or sustained, damages or injury for all losses, costs, charges, expenses, damages, and injury which the said ship, or the owner or owners of the said ship, or the owners, freighters, or shippers of the said cargo, already have or may hereafter pay, sustain, incur, or be put unto by, or on account of, the premises, or for which the insurer or insurers is, or are respectively liable to pay, or to make contribution or average, according to custom, or their respective contracts or obligations, and that no part of such losses and expenses already incurred or hereafter to be incurred, do fall on him, the said A. B., his officers, or crew.

Thus done and Protested in the City of Norfolk and State of Virginia, this thirteenth day of September, in the year of our Lord one thousand eight hundred and fifty-five.

In Testimony Whereof, I have caused the said applicants to

sign these presents, and I, the said Notary, have subscribed my name, and have also caused my Seal of Office to be hereunto affixed, the day and year last above written.

F. B. D.,

Notary Public. [L. s.]

A. B. (Master.)

C. D. (Mate.)

E. F. (Carpenter.)

G. H. (Seaman.)

I. J. (Do.)

(309.)

*Protest by the Master of a Vessel for Demurrage,
payable under the Stipulations of a Charter-Party.*

UNITED STATES OF AMERICA.

STATE OF NEW YORK, }
City of New York. } ss.

To all people to whom these presents shall come, or may concern: I, A. B., a Public Notary, in and for the State of New York, by Letters Patent, under the Great Seal of the said State, duly commissioned and sworn, dwelling in the city of New York, send greeting:

Know Ye, that on the ----- day of -----, in the year of our Lord one thousand eight hundred and -----, personally came and appeared before me, the said Notary, C. D., Master of the ship or vessel called the "Meridian," belonging to the port of -----, in the said United States of America who, having been by me, the said Notary, duly sworn on the Holy Evangelist of Almighty God, did depose as follows: That is to say, That he, this appearer, as such master as aforesaid, did, on or about the ----- day of ----- last, let the said ship to freight to E. F., of -----; and a charter-party of the said vessel, for a voyage from ----- to -----, and from thence back to -----, was entered into on the said ----- day of ----- last, and made between this appearer of the one part, and the said E. F. of the other part, for the said voyage, whereby it was, amongst other stipulations, engaged and agreed [*here state the number of days allowed for unloading and reloading, and the amount per day to be paid for demurrage, as mentioned in the charter-party*].

That this appearer, pursuant to the said charter-party, did receive on board the said vessel, at ----- aforesaid, a cargo of lawful goods, provided and shipped by the agents of the said E. F. there, and from thence proceeded therewith, on board the said vessel, direct to ----- aforesaid, where she arrived on the ----- day of ----- instant; and on the ----- instant, when the said vessel had been reported, and got into a proper berth for discharging, this appearer gave notice to G. H. & Company, the agents at ----- of the said E. F., and to which agents the cargo was addressed, that this appearer was ready to deliver the said cargo of goods; and that the agents of the said freighter caused the discharge of the said cargo of goods to be commenced, and they received and took the same from the said vessel, and then proceeded to put on board the said vessel another cargo of goods for her voyage back to ----- aforesaid; but that the agents of the said freighter did not complete the loading thereof until the ----- day of ----- instant, being ----- days beyond the time hereinbefore mentioned and allowed in and by the said charter-party to the said freighter or his agents, for discharging and reloading the said vessel at -----, as aforesaid, whereby the said freighter hath become liable to pay demurrage for such delay or detention, pursuant to the said charter-party, for ----- days, at and after the rate of ----- per day, amounting to the sum of ----- dollars; and which sum, or any part thereof, the said agents of the said freighter have refused to pay. Wherefore, the said appearer, C. D., on behalf of the owners of the said vessel, and on behalf of himself, as master, doth protest; and I, the said Notary, at his request, do also protest against the said freighter, E. F., and against his agents, the said G. H. & Company, and against all and every other person or persons whomsoever, responsible or liable, or whom these presents do, shall, or may concern, and holding him and them responsible and liable for the breach of the said charter-party, and for all demurrage, damage, injury, loss, wages,

costs, and expenses incurred, owing, or sustained, or to be incurred or sustained, by reason of the said breach, delay, detention, or other premises.

Thus done and Protested, etc.

[L. S.]

A. B., *Notary Public.*

(310.)

*Protest by the Master of a Vessel against the Con-
signees of Goods for not taking and discharging
them from the Vessel in a reasonable Time.*

UNITED STATES OF AMERICA.

STATE OF NEW YORK, }
City of New York, } ss.

To all people to whom these presents shall come, or may concern: I, A. B., a Public Notary, in and for the State of New York, by Letters Patent, under the Great Seal of the said State, duly commissioned and sworn, dwelling in the City of New York, send greeting:

Know Ye, that on the ----- day of -----, in the year of our Lord one thousand eight hundred and -----, personally came and appeared before me, the said Notary, C. D., Master of the ship or vessel called the "St. Lawrence," belonging to the port of Boston, who, having been by me, the said Notary, duly sworn on the Holy Evangelists of Almighty God, deposed as follows: That is to say, That this appearer did, on or about the ----- day of ----- last, receive on board the said vessel, at the port of -----, [*here describe the goods*], all of which were shipped on board her there by D. E. & Company, addressed to F. G., at ----- aforesaid; and this appearer duly signed bills of lading, as customary, expressing the said goods to be deliverable to the said F. G. at -----, he or they paying the freight for the same, with primage accustomed.

That this appearer proceeded, with the said goods, on board the said vessel, direct to ----- aforesaid, where she

arrived on the ----- day of ----- instant, and on the ----- day of ----- instant, when the said vessel had been reported, and had got in a proper berth for discharging, this appearer gave notice to the said F. G., to whom the said goods were addressed, that this appearer was ready to deliver the said goods; but from that time up to the date of making these presents, neither the said F. G., nor any other person on his behalf, hath received or discharged, or offered to receive or discharge, the said goods from the said vessel, or paid or offered to pay the freight and primage thereof, although this appearer is willing and desirous to deliver the said goods; and notwithstanding this appearer hath several times applied to, and requested the said F. G. to have the said goods discharged from the said vessel, and received by him, yet he still delays and neglects so to do; and that such delay and neglect are unreasonable and injurious to the interests of the owners and master of the said vessel. Wherefore, the said C. D., on behalf of the owners of the said vessel, and on behalf of himself, as master, doth protest, and I, the said Notary, at his request, do also protest, against the said F. G., and against all and every other person or persons whomsoever, responsible or liable, or whom these presents do, shall, or may, concern, and holding him or them responsible and liable for all demurrage, damage, injury, loss, wages, costs, and expenses incurred, owing, or sustained, or to be incurred or sustained by reason of the said unreasonable delay, detention, or other the premises.

Thus done and protested, etc.

[L. S.]

A. B., *Notary Public.*

(311.)

Form of a Charter-Party.

This Charter-party of affreightment, indented, made, and fully concluded upon, this ----- day of -----, in the year 18--, between -----, owner of the good -----, of the burden of ----- tons or thereabouts, now lying in the harbor of -----, whereof ----- is at present master, on the one part, and -----, on the other part; Witnesseth, that the said -----, for the consideration hereafter mentioned, ha-- letten to freight -----, the aforesaid -----, with appurtenances to her belonging, for a voyage to be made by the said -----, where she is to be discharged (the dangers of the seas excepted); and the said -----, do-- by these presents, covenant and agree with the said -----, in manner following: That is to say, that the said -----, in and during the voyage aforesaid, shall be tight, staunch, and strong, and sufficiently tackled and appareled with all things necessary for such a vessel and voyage; and that it shall and may be lawful for the said -----, agents or factors, as well at ----- as at -----, to load and put on board the said -----, loading of such goods and merchandise as they shall think proper—contraband goods excepted.

In consideration whereof, the said -----, do-- by these presents, agree with the said -----, well and truly to pay, or cause to be paid, unto -----, in full for the freight or hire of the said ----- and appurtenances, the sum of -----, and so in proportion for a less time, as the said ----- shall be continued in the aforesaid service, in ----- days after her return to -----, or in ----- days after the said voyage shall be otherwise, in any manner whatsoever deter-

mined, and notice thereof to the said.....; and the said
 do... agree to pay the charge of victualing and
 manning said; and the said do... also
 agree to pay the port-charges and pilotage during said voyage,
 and to deliver said, on her return to,
 to the owner aforesaid, or order..

And to the true and faithful performance of all and singular
 the covenants, payments, and agreements aforementioned, each
 of the parties aforenamed binds and obliges himself, his executors
 and administrators, in the penal sum of dollars, firmly
 by these presents.

In witness whereof, the parties aforesaid have hereunto inter-
 changeably set their hands and seals, the day and year above
 written.

Signed, sealed, and delivered }
 in presence of }

(312.)

Form of a Bill of Sale of a Registered Ship.

To all people to whom this present bill of sale shall come,
send greeting:

Know ye, that -----, the said -----, for and in
consideration of -----, to ----, in hand, well and truly
paid, at or before the sealing and delivery of these presents, by
-----, the receipt whereof ----- do hereby acknowledge, and
----- therewith fully and entirely satisfied and contented, have
granted, bargained, and sold, and by these presents do grant,
bargain, and sell unto the said ----- all the hull or body
of the good -----, together with all and singular
her -----, now lying at ----- and -----, at the
port of -----, the certificate of whose registry is as
follows, viz.:

In pursuance of an Act of the Congress of the United States
of America, entitled "An Act concerning the registry and record-
ing of Ships or Vessels," ----- having taken and sub-
scribed the ----- required by the said act; and having -----
that ----- only owners of the ship or vessel called the
-----, of -----, whereof ----- is at present master,
and is a citizen of the United States -----, and that the said ship
or vessel was ----- And ----- having certified that the
said ship or vessel has ----- deck and mast; and that her length is
-----, her breadth -----, her depth -----, and that she measures
----- tons; that she is -----, has -----, and ----- head;
and the said ----- having agreed to the description and ad-
measurement above specified, and sufficient security having been
given, according to the said act, the said ----- has been
duly registered at the port of -----.

Given under ---- hand. and seal., at the port of -----,
this ----- day of -----, in the year one thousand eight
hundred and -----.

To have and to hold, the said granted and bargained -----
and premises, with all the appurtenances, unto the said -----,
heirs, executors, administrators, or assigns, to ---- only proper
use, benefit, and behoof forever. And ---- the said -----
do avouch to be the true and lawful owner of the said -----
and her appurtenances, and have, in ---- full power, good right,
and lawful authority, to dispose of the said ----- and her
appurtenances, in manner as aforesaid. And, furthermore, ----,
the said -----, do.. hereby covenant and agree to warrant
and defend the said ----- and appurtenances, against the
lawful claims and demands of all persons whatsoever, unto ----,
the said -----.

In witness whereof, ----, the said -----, ha.. hereunto
set ... hands and seals, the ----- day of -----, in the year
of our Lord one thousand eight hundred and -----.

Signed, sealed, and delivered, }
in the presence of ----- }

(313.)

Form of a Bill of Sale of an Enrolled Ship.

Know all men by these presents, That -----, for and in consideration of the sum of -----, to ----- in hand paid, by -----, the receipt whereof is hereby acknowledged, Have, and by these presents do, grant, bargain, sell, assign, transfer, and set over unto the said ----- all the hull or body of the good -----, together with ----- her masts, yards, sails, rigging, anchors, cables, boats, tackle, apparel, and appurtenances; which said vessel is enrolled in the port of -----, in the words following, to wit:

No. ----- Enrollment, in conformity to an Act of Congress of the United States of America, entitled "An Act for Enrolling and Licensing Ships or Vessels to be employed in the Coasting-trade and Fisheries, and for Regulating the same." ----- having taken or subscribed the ----- required by the said act, and having ----- that -----, citizen of the United States, sole owner of the ship or vessel called the -----, of -----, whereof ----- is present master, and, as he hath -----, is a citizen of the United States, and that the said ship or vessel has ----- deck., and ----- mast., and that her length is -----, her breadth -----, her depth -----, and that she measures ----- tons; that she is -----, has ----- and ----- head; and the said ----- having agreed to the description and admeasurement above specified, and sufficient security having been given, according to the said act, the said ----- has been duly enrolled at the port of -----.

Given under ----- hand. and seal., at the port of -----, this ----- day of -----, in the year one thousand

eight hundred and To have and to hold, the said
 unto the said, executors, adminis-
 trators, and assigns, forever. And the said
, for heirs, executors, and adminis-
 trators, do hereby covenant and agree, to and with the said
, executors, administrators, and assigns, and, at
 the execution of these presents,, the true and law-
 ful owner.. of the said and appurtenances, and
 now have full right and authority to sell and dis-
 pose of the same, freed from, and cleared of, all claims, incum-
 brances, or demands whatsoever.

In witness whereof, have hereunto set
 hand.. and seal.., the day of, in the
 year of our Lord one thousand eight hundred and

Scaled and delivered in the }
 presence of }

(314.)

General Release.

To all to whom these presents shall come, greeting :

Know ye, that I, -----, for and in consideration of the sum of ----- dollars, lawful money of the United States of America, to me in hand, paid by -----, Master of the -----, I have remised, released, and forever discharged, and, by these presents, do, for myself, my heirs, executors, and administrators, remise, release, and forever discharge, the said -----, their heirs, executors, and administrators, of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, recognizings, bonds, bills, specifications, covenants, contracts, controversies, agreements, provisions, various trespasses, damages, judgments, extents, executors' claims and demands, whatsoever, in law or in equity, which against them, or either of them, I ever had, now have, or which my heirs, executors, or administrators, hereafter can, shall, or may have for, upon, or by reason of any matter, cause, or thing, whatsoever, from the beginning of the world to the day of the date of these presents.

In witness whereof, I have hereunto set my hand and seal, this ----- day of -----, A. D. 18-----

Sealed and delivered in }
presence of ----- }

(315.)

Agreement for the Freight of a Ship.

Articles made and entered into this ----- day of -----, in the year -----, between A. B., Master of the ship C., of the burden of ----- tons, or thereabouts—now at anchor at -----, and bound out on a voyage to D.—of the one part, and E. F., of -----, merchant, of the other part. The said A. B., for the consideration hereafter mentioned, doth covenant to and with the said E. F., his etc., that the ship aforesaid shall, with all expedition, be made ready, and provided in all respects, for the voyage aforesaid, and shall receive on board, for the said E. F., the following goods [*here enumerate them*], and, within ----- days after the date hereof, shall set sail from ----- outwards, and, weather serving, shall sail directly to D., and within ----- days after her arrival there, shall unload and deliver the same unto the factors of the said E. F. (the dangers of the sea, enemies, and the restraint of princes and rulers only excepted). And the said E. F., for himself, etc., doth covenant to and with the said A. B., his etc., that he, the said E. F., his etc., shall lade, or tender the said goods to be laden, on board the said ship, and receive and discharge the same from on board the same, at D. aforesaid, within the respective times before limited; and will pay unto the said A. B., his etc., for freight thereof, at the rate of -----, immediately after a right discharge and delivery of the same, at D., aforesaid, with primage and average accustomed, and two thirds of all port-charges to grow due during the said voyage, the other third part thereof to be paid to the said A. B.

In witness whereof, the said parties to these presents have hereunto set their hands and affixed their seals, the day and year first above written.

(316.)

FORM OF A BILL OF LADING.

Shipped in good order and condition, by *John B. Smith*, on board the good Brig "*Washington*," whereof *Thomas Brown* is master for the present voyage, now lying in the port of *Baltimore*, and bound for *Charleston, S. C.*, To say:

ONE THOUSAND BARRELS OF FLOUR,



Being marked and numbered as in the margin, and are to be delivered in the like good order and condition, at the aforesaid port of *Charleston* (the dangers of the seas only excepted), unto *Messrs. Jno. Williams & Co.*, or to their assigns, they paying freight for the same at the rate of thirty cents per barrel, with -- per cent. primage, and average accustomed.

In witness whereof, the master of said vessel hath affirmed to three Bills of Lading, all of this tenor and date; one of which being accomplished, the others to stand void.

Dated at *Baltimore*, this first day of September, 1856.

THOMAS BROWN.

(317.)

EUROPEAN COINS,

REDUCED TO DOLLARS AND CENTS.

GREAT BRITAIN.		ITALY.	
Farthing	\$.00-46	Soldi . . . . .	.00-80
Penny . . . . .	.01-85	Chevalet . . . . .	.03-18
Shilling . . . . .	.22-22	Lire . . . . .	.15-92
Crown, or 5 Shillings	1-11-16	Testoon . . . . .	.23-88
Pound	4-44-44	Croisade . . . . .	.79-60
Guinea, 21 Shillings	4-66-66	Pezzo of Ex. . . . .	.92-60
FRANCE.		Genouine	1-36-12
Denier . . . . .	.00-08	Pistole	3-20-00
Sol, or 12 Deniers . . . . .	.00-92	SWITZERLAND.	
Livre Tournois, or 20 Sols . . . . .	.18-52	Fenning . . . . .	.00-24
Ecu, or Crown, 6 Livres	1-10-00	Cruitzer . . . . .	.00-92
Pistole, 10 Livres	1-85-17	Sol . . . . .	.02-77
Louis d'Or	4-44-44	Gulden . . . . .	.55-55
Franco . . . . .	.18-74	Rix-Dollar	1-00-00
Five Francs . . . . .	.93-78	AUSTRIA.	
SPAIN.		Cruitzer . . . . .	.00-86
Marvedie . . . . .	.00-30	Grosch . . . . .	.03-14
Rial . . . . .	.10-00	Batsen . . . . .	.03-44
Pistarine . . . . .	.20-00	Gould . . . . .	.51-87
Piaster of Ex. . . . .	.80-00	Rix-Dollar . . . . .	.77-77
Dollar	1-00-00	Ducat	2-07-40
Ducat of Ex.	1-10-18	SWEDEN.	
Pistole	3-60-00	Stiver . . . . .	.00-72
HOLLAND.		Copper Marc . . . . .	.02-88
Stiver . . . . .	.01-94	Silver Marc . . . . .	.08-64
Scalin . . . . .	.11-64	Copper Dollar . . . . .	.11-52
Guilder, or Florin . . . . .	.38-80	Caroline . . . . .	.25-92
Rix-Dollar . . . . .	.97-00	Rix-Dollar	1-03-70
Ducat	2-07-86	Ducat	2-07-40
Gold Ducat	8-00-00	DENMARK.	
PORTUGAL.		Skilling . . . . .	.01-04
Re . . . . .	.00-12	Duggen . . . . .	.06-24
Vintin . . . . .	.02-50	Marc . . . . .	.16-66
Testoon . . . . .	.12-50	Rix-Marc . . . . .	.20-83
Crusade of Ex. . . . .	.50-00	Rix-Ort . . . . .	.25-00
Milre	1-25-00	Crown . . . . .	.66-66
Moidore	6-00-00	Rix-Dollar	1-00-00
Joanese	8-00-00		

PRUSSIA.		Pollin	-	-	-	-	50-00
Grosch	-	-	-	-	-	-	00-86
Constat	-	-	-	-	-	-	04-32
Tineo	-	-	-	-	-	-	12-96
Ort	-	-	-	-	-	-	15-55
Florin	-	-	-	-	-	-	25-92
Rix-Dollar	-	-	-	-	-	-	77-76
Ducat	-	-	-	-	-	-	2-07-40
Frederic d'Or	-	-	-	-	-	-	3-88-80
RUSSIA.		TURKEY.					
Altin	-	-	-	-	-	-	03-00
Grievonax	-	-	-	-	-	-	10-00
Polpotn	-	-	-	-	-	-	25-00
		Mangar	-	-	-	-	00-26
		Asper	-	-	-	-	01-12
		Parac	-	-	-	-	03-33
		Bestic	-	-	-	-	05-55
		Estic	-	-	-	-	11-11
		Solata	-	-	-	-	22-22
		Piaster	-	-	-	-	88-88
		Caragrouch	-	-	-	-	1-11-10
		Xeriff	-	-	-	-	2-22-20

NOTE.-- The value of a Pound sterling (established by Congress) is \$4-84
 " " " Sovereign " " 4-83

(318.)

Agreement to Build a Ship.

Articles of Agreement, made the day of, 1856, between A. B., of, Shipbuilder, of the one part, and C. D., of, of the other part.

Whereas, it is in contemplation, on the part of the said C. D., to build a certain ship, and for that purpose the said C. D. gave notice to different shipbuilders of his intention to build such ship, and invited tenders for the building, launching, and completing of the same, and the said C. D. received, amongst other tenders, one from the said A. B., for building, launching, and completing such ship, which tender the said C. D. had accepted, upon the terms and conditions hereinafter more particularly expressed, and the said parties have thereupon mutually agreed to enter into and execute these presents. Now these presents witness, that the said A. B., in consideration of the several and respective payments to be made by the said C. D., in pursuance of his covenant in that behalf hereinafter contained, doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree to and with the said C. D., his executors, administrators, and assigns, in manner following, that is to say: That he, the said A. B., his heirs, executors, or administrators, shall and will build and complete for the said C. D., with the best materials which can be obtained, a good, staunch, and substantial ship, corresponding in every respect agreeable to and with the specification in the schedule hereunto annexed, and with the drawing of the said ship thereon, and also with the plan of the fore cabin and accommodation, respectively signed by the said C. D. and by the said A. B., also hereunto annexed, so far as the same is and are, in such specification, drawing, and plan set out;

and, also, that the said ship so covenanted to be built shall, at the costs, charges, expenses, and risk of the said A. B., his executors, administrators, or assigns, be launched and completed, and delivered into the hands of the said C. D., his executors, administrators, or assigns, or his or their agent, authorized in writing, on the of, in the year of our Lord, in the port of, and be, in every respect, ready to receive rigging, and be finally completed and launched, on or before the day of, 18....

And, also, that at all times during the building, launching, and completing of the said ship, hereinbefore covenanted to be built, such surveyor, or other person or persons, as the said C. D. shall, from time to time, appoint for that purpose, on the part of the said C. D., shall be allowed to come in, upon, and about the same, and every part thereof, to superintend, direct, examine, and view the materials and workmanship, and state of progress of the same. And these presents further witness that, in consideration of the premises, the said C. D., for himself, his executors, and administrators, doth covenant, promise, and agree, to and with the said A. B., his executors, administrators, and assigns, that he, the said C. D., shall and will pay to the said A. B., as the price of the said ship, so to be built, launched, and completed, as aforesaid, at and after the rate of or sum of dollars, of lawful money of the United States of America, per ton, according to the burden of the said ship in tonnage, by register measurement, such payment to be made as follows (provided the surveyor, or other person or persons appointed on behalf of the said C. D., shall have given, from time to time, a certificate, stating that the works have been respectively done to his or their satisfaction): That is to say, one-fifth part of the whole amount thereof, on or before the execution of these presents; one other fifth part of the whole amount thereof, when the vessel shall be in frame and the keelson bolted; one other fifth part of the whole amount thereof, when the wales of the said ship shall be worked, and the bottom planked; one other fifth part thereof, when. and

immediately after, all the beams shall be in and fastened, and the decks laid; and the remaining fifth part thereof, upon the delivery, by the said A. B., his executors, or administrators, of the usual builder's certificate, stating the said C. D. to be the purchaser of the said ship, and delivery of the said ship into the possession of the said C. D., or his authorized agent, duly appointed to receive the same; and, also, that if, at any time during the period of the building and completing of the said ship hereinbefore covenanted to be built, or previously to, or after such ship being ready for sea, as aforesaid, any alteration or alterations whatever in the building, constructing, or fitting of such ship, or any part thereof, or such part of the apparatus and appurtenances as is hereinbefore covenanted to be fitted, shall be directed to be made, by the said C. D., or the person or persons to be by him lawfully appointed as surveyor, in that behalf, as aforesaid such alteration or alterations shall not be made by the said A. B., unless on the authority of a letter, signed by the said C. D., stating that he directs such alteration to be made and specifying the precise amount which the said C. D. will allow for the same, and no more; and, in the event of the said A. B. not being willing to make such alteration for such sum, he shall be at liberty to decline doing so, provided he shall signify that he does so decline, for that reason, within one week from his receiving such letter, otherwise it is hereby agreed, by the parties aforesaid, that such alterations shall be made accordingly, for the sum so specified. And in case any such alteration or alterations shall be so, as aforesaid directed to be made, no additional time, unless expressly stated and allowed in the letter signed as aforesaid, shall be allowed for the launching, completing, and docking the said ship hereinbefore covenanted to be built, unless any delay in the works in progress shall have unavoidably arisen during the consideration of such projected alteration or alterations, in which case an additional time or leave, in writing, shall be allowed, equivalent to the loss of time consequent on such delay; provided, always and it is hereby further agreed, that any omissions

respecting the building of such ship, which may occur in the specification and drawings before referred to, shall, nevertheless, be considered in no way authorizing the omission of any matters in the performance of this contract, which may be directed to be done, in pursuance thereof, by -----, the surveyor of the said C. D., or other such person or persons as aforesaid; but, on the contrary, the said ship shall be completed without any extra charge to the said C. D., beyond the rate hereinbefore agreed to be paid for the said ship, either for shipwrights, caulkers, smiths, sawyers, joiners, copper-smiths, carvers, plumbers, painters, glaziers, or any other work whatever. And it is further agreed, that such damage as shall happen to the hull of the said ship, from fire or otherwise, previously to her leaving the dry-dock, as mentioned in the said specification being delivered over to the said C. D., or his authorized agent as aforesaid, shall be forthwith made good by and at the sole expense of the said A. B., his executors, or administrators; provided, always and it is hereby expressly declared and agreed, and the said A. B. for himself, his heirs, executors, and administrators, doth hereby covenant and agree, with the said C. D. that in case the said A. B. shall fail, or be unable to complete the said ship or vessel in accordance with the covenant herein in that behalf contained, then, and from thenceforth, it shall be lawful for the said C. D., to enter upon, and take possession of, the said ship or vessel, which, from and after the payment of the first installment, shall be, and be deemed, and continue to be, as soon as the said ship or vessel shall be commenced, in every respect, and for every purpose, the property of the said C. D., and to cause the works, herein agreed to be done, to be completed, by any person or persons whom he shall see fit to employ therein, using therein such of the materials of the said A. B. as shall be fit and applicable to the purpose, and it shall be lawful for the said C. D. to pay to such person or persons such reasonable sum or sums as he shall see fit to agree upon in that behalf, and that the said A. B. shall forthwith, on demand, pay to the said C. D. all such sum

and sums as he, the said C. D., shall so pay or advance, the said C. D. in that case, nevertheless, paying or allowing, to the said A. B., on the final completion of the vessel, the amount of the contract-price hereby agreed upon. In Witness, etc.

Schedule, Drawing, and Plan, above referred to, must be added.

(319.)

Form of a Policy of Insurance on Cargo (New York form).

CARGO ----- BY THE ----- INSURANCE COMPANY (No. ---).

-----, on account of -----,
 in case of loss to be paid to -----,
 do.. make insurance, and cause ----- dollars
 to be insured, lost or not lost, at and from -----
 -----,
 upon all kinds of lawful goods and merchandise, laden or to be
 laden on board the good -----, whereof -----
 is master for the present voyage -----, or whoever
 else shall go for master in the said vessel, or by whatever other
 name or names the said vessel or the master thereof is or shall
 be named or called.

BEGINNING the adventure upon the said goods and merchandise
 from and immediately following the loading thereof on board of
 the said vessel at ----- aforesaid, and so shall continue
 and endure until the said goods and merchandise shall be safely
 landed at ----- aforesaid. AND it shall and may be
 lawful for the said vessel, in her voyage, to proceed and sail to,
 touch and stay at, any ports or places, if thereunto obliged by
 stress of weather, or other unavoidable accident, without preju-
 dice to this insurance. The said goods and merchandise, hereby
 insured, are valued at -----.

TOUCHING the adventures and perils which the said -----
 Insurance Company is contented to bear, and takes upon itself
 in this voyage, they are of the *seas, men-of-war, fires, enemies,*
pirates, rovers, thieves, jettisons, letters of mart and counternart, sur-
prisals, takings at sea, arrests, restraints, and detainments of all

kings, princes, or people, of what nation, condition, or quality soever, barratry of the master and mariners, and all other perils, losses, and misfortunes that have or shall come to the hurt, detriment, or damage of the said goods and merchandise, or any part thereof. And, in case of any loss or misfortune, it shall be lawful and necessary to and for the insured, ---- factors, servants, and assigns, to sue, labor, and travel for, in and about the defense, safeguard, and recovery of the said goods and merchandise, or any part thereof, without prejudice to this insurance; nor shall the acts of the insured or insurers, in recovering, saving, and preserving the property insured, in case of disaster, be considered a waiver or an acceptance of abandonment; to the charges whereof, the said Insurance Company will contribute according to the rate and quantity of the sum herein insured; having been paid the consideration for this insurance, by the assured or ---- assigns, at and after the rate of -----

*And in case of loss, such loss to be paid in thirty days after proof of loss, and proof of interest in the said ----- (the amount of the note given for the premium, if unpaid, being first deducted), but no partial loss or particular average shall in any case be paid, unless amounting to *five per cent.* Provided, always, and it is hereby further agreed, That if the said assured shall have made any other assurance upon the premises aforesaid, prior in date to this policy, then the said ----- Insurance Company shall be answerable only for so much of such as the amount of such prior assurance may be deficient towards fully covering the premises hereby assured; and the said ----- Insurance Company shall return the premium upon so much of the sum by them assured as they shall be, by such prior assurance, exonerated from. And, in case of any insurance upon the said premises, subsequent in date to this policy, the said ----- Insurance Company shall, nevertheless, be answerable for the full extent of the sum by them subscribed hereto, without right to claim contribution from such subsequent assurers, and shall, accordingly, be entitled to retain the premium by them received,*

in the same manner as if no such subsequent assurance had been made. IT IS ALSO AGREED, That the property be warranted by the assured free from any charge, damage, or loss which may arise in consequence of a seizure or detention, for or on account of any illicit or prohibited trade, or any trade in articles contraband of war.

IN WITNESS WHEREOF, the President or Vice-President of the said Insurance Company hath hereunto subscribed his name, and the sum insured, and caused the same to be attested by their Secretary, in New York, the day of, one thousand, eight hundred and

MEMORANDUM.—It is also agreed, that bar, bundle, rod, hoop, and sheet-iron, wire of all kinds, tin plates, steel, madder, sumac, wicker-ware and willow (manufactured or otherwise), salt, grain of all kinds, tobacco, Indian meal, fruits (whether preserved or otherwise), cheese, dry fish, vegetables and roots, rags, hempen-yarn, bags, cotton-bagging, and other articles used for bags or bagging, pleasure-carriages, household-furniture, skins and hides, musical-instruments, looking-glasses, and all other articles that are perishable in their own nature, are warranted by the assured free from average, unless general; hemp, tobacco-stems, matting, and cassia (except in boxes), free from average under *twenty per cent.*, unless general; and sugar, flax, flax-seed, and bread, are warranted free from average under *seven per cent.*, unless general; and coffee (in bags or bulk), pepper (in bags or bulk), and rice, free from average under *ten per cent.*, unless general.

Warranted by the assured free from damage or injury, from dampness, change of flavor, or being spotted, discolored, musty, or mouldy, except caused by actual contact of sea-water with the articles damaged, occasioned by sea-perils. In case of partial loss by sea-damage to dry goods, cutlery, or other hardware, the loss shall be ascertained by a separation and sale of the portion only of the contents of the packages so damaged, and not otherwise; and the same practice shall obtain as to all other merchandise, as far as practicable. Not liable for leakage

on molasses or other liquids, unless occasioned by stranding, or collision with another vessel.

If the voyage aforesaid shall have been begun, and shall have terminated before the date of this policy, then there shall be no return premium on account of such termination of the voyage.

In all cases of return of premium, in whole or in part, *one-half per cent.* upon the sum insured is to be retained by the assurers.

WARRANTED not to abandon in case of capture, seizure, or detention, until after condemnation of the property insured, nor until ninety days after notice of said condemnation is given to the Company; also warranted not to abandon in case of blockade, and free from any expense in consequence of capture, seizure, detention, or blockade; but, in the event of blockade, to be at liberty to proceed to an open port, and there end the voyage.

§-----

-----, *President.*

-----, *Secretary.*

(320.)

Form of a Libel in a suit in rem., for Labor, Materials, or Supplies furnished in repairing, fitting out, or furnishing a Foreign Maritime Vessel.

IN ADMIRALTY.

{ To the Judge of the District Court of the
 { United States, for the District of -----

A. B., of -----, [*here state the occupation of the libelant, as shipwright, ship-chandler, sail-maker, rope-maker, blacksmith, merchant, etc., as the case may be*], exhibits this, his libel, against the ship H.---- (whereof C. D. is, or lately was, master), now lying at the port of -----, in the district aforesaid, and within the admiralty and maritime jurisdiction of this Honorable Court, her boats, tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause of contract civil and maritime. And thereupon the said A. B. doth allege and articulately propound, as follows, to wit:

FIRST. That the said ship H. was, at the time when the repairs (*or supplies*) hereinafter mentioned were made (*or furnished*), a foreign vessel, owned by some person or persons not residing in the State of [*here insert the name of the State in which the services were rendered, or materials or necessities supplied*], and who are to the libelant unknown [*or, if the owner and his residence are known, state his name and residence*], and is of the burden of about ----- tons.

SECOND. That on or about the ----- day of -----, the said ship, then lying at the port of -----, in the State of [*the State in which the services were rendered, or the materials furnished*], and within the flux and reflux of the sea, the said C. D., master of the said ship H., represented to the libelant, that the said ship

stood in need of the repairs [*or supplies*] hereinafter mentioned, in order to render her seaworthy and competent to proceed to sea on her intended voyage, and requested the libelant to make such repairs [*or furnish such supplies*]; and that the libelant, in pursuance of such representation and request, on the day and at the place last above mentioned, undertook to repair, and did repair [*or to furnish supplies for, and did supply*] the said ship, by removing from her hull several courses of worn and decayed plank, and replacing them by new plank; making and hanging a new rudder; putting a new fluke on her sheet-anchor; caulking her upper seams; mending her sails and rigging [*etc., as the case may be; or, by furnishing for the use of the said ship, one new chain-cable, one long-boat, four spars, one topsail, a large quantity of provisions, consisting of ship-bread, vegetables, pork, and other ship-stores, etc., as the case may be*]; which repairs [*or supplies*] and the value thereof are truly and more particularly stated and described in the schedule or account hereunto annexed, and which amount in the whole to ----- dollars and ---- cents.

THIRD. That the said repairs [*or supplies*] were so made [*or furnished*] by the libelant, on the credit of the said ship, as well as of the owners and the said master thereof; and were suitable, proper, and necessary, for the purpose of enabling the said ship to proceed to sea with safety.

FOURTH. That the aforesaid sum of ----- dollars and ----- cents still remains wholly unpaid, and due to the libelant [*or, if a part has been paid, add, except the sum of -----, mentioned in the schedule, or account hereunto annexed*], although the libelant has often requested the said C. D., the aforesaid master of the said ship, to pay the same.

FIFTH. That all and singular the premises are true. Wherefore the libelant prays that process in due form of law may issue against the said ship H., her boats, tackle, apparel, and furniture; and that this Honorable Court will pronounce for his aforesaid demand, and decree the same to be paid, with costs; and for such other and further relief and redress as to right and just-

ice may appertain, and as the Court is competent to give in the premises.

(Signed) A. B., *Libelant*.

G. H., *Proctor*.

On the ----- day of -----, appeared personally
A. B., the above-named libelant, and was sworn }
to the truth of the foregoing libel,

Before me, J. K., *Clerk* [or *Commissioner*].

SCHEDULE or Account referred to in the foregoing Libel:

----- feet of ship-plank ----- \$-----

Etc.

Of which there has been paid to the libelant the sum of \$-----

(321.)

Form of a Libel in a suit in rem., by a Mariner for Wages.

IN ADMIRALTY.

{ To the Judge of the District Court of the
 { United States, for the District of

A. B., of, late mariner on board the ship or vessel F., now lying at the port of, in the district aforesaid, and within the admiralty and maritime jurisdiction of this Honorable Court, exhibits this his libel against the said ship or vessel, whereof C. D. now is, or lately was, master, her boats, tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause of subtraction of wages, civil and maritime. And thereupon the said A. B. doth allege and articulately propound as follows, to wit:

FIRST. That on or about the day of, A. D., the ship or vessel F., whereof the said C. D. was master, being then in the port of, and designed on a voyage upon the high seas, and within the flux and reflux thereof, and within the admiralty and maritime jurisdiction of this Honorable Court, to wit: from the said port of to, and back to the said port of, he, the said C. D., did ship and hire the libellant to serve as a mariner on board the said ship for and during the said voyage, at the rate or wages of dollars per month; and, accordingly, on or about the day of, the libellant entered on board and into the service of the said ship, in the capacity, and at the monthly wages aforesaid, and signed the usual shipping-articles or mariner's contract, which, for greater certainty, he prays may be produced by the said C. D. to this Honorable Court.

SECOND. That the said ship, having taken in a cargo of divers goods and merchandise, proceeded on her said voyage, with the libelant on board, and arrived at the said port of ----- on or about the ----- day of -----, with the said cargo on board, which she delivered, or otherwise disposed of, and then proceeded on her homeward-bound voyage to the said port of -----, where she arrived on or about the ----- day of -----, with the libelant on board, and was there safely moored; and the said C. D. discharged the libelant from the service of the said ship without paying him the wages due to him for the said voyage [*or, if a part has been paid, then say, except the sum of -----*], though often applied to and requested to pay the same.

THIRD. That, during all the aforesaid voyage, the libelant well and truly performed his duty on board the said ship, in the capacity aforesaid, and was obedient to all the lawful commands of the said master and other officers on board the said ship, and well and truly deserved the wages of ----- dollars per month, as schedulate.

FOURTH. That all and singular the premises are true.

Wherefore, the libelant prays that process, in due form of law, may issue against the said ship F., her boats, tackle, apparel, and furniture, and that this Honorable Court will pronounce for the wages aforesaid, and decree the same to be paid, with costs, and for such other and further relief and redress as to right and justice may appertain, and as the court is competent to give in the premises.

(Signed) A. B., *Libelant*.

G. H., *Proctor*.

On the ----- day of -----, appeared personally
A. B., the above-named libelant, and was sworn }
to the truth of the foregoing libel,

Before me, J. K., *Clerk* [*or Commissioner*].

SCHEDULE to which the foregoing libel refers:

Wages from the	-----	day of	-----	18--	to	
	-----			18--	months and	----- days, at
	-----	dollars per month.	-	-	-	\$-----
Deduct	-	-	-	-	-	-----
						<hr/> \$-----

NOTE.—For the jurisdiction, law, and practice of the Courts of the United States, in Admiralty and Maritime Causes, see "Admiralty Jurisdiction and Practice, by Alfred Conklin, Judge of the United States, for the Northern District of New York;" where the general rules of court are fully laid down, and numerous practical forms of libel, etc., given

(322.)

*An Agreement as to Owning and Sailing a Vessel in
Co-partnership.*

Articles of Agreement indented, made, etc., Between A. B., of etc., of the one part, and C. D., of etc., of the other part. Whereas, the said A. B. hath this day purchased of the said C. D. one-half part or share of all that ship or vessel called the -----, of the burden of ----- tons or thereabouts, and also one-half part or share of all and singular, the anchors, cables, ropes, masts, sails, yards, boats, oars, apparel, and furniture whatsoever to the said ship or vessel belonging, or in anywise appertaining, which ship or vessel is now employed in ----- trade, whereof the said C. D. is master, as by the bill of sale thereof, reference being thereunto had, will more fully appear. Now, this agreement witnesseth, and the said party doth hereby mutually covenant and agree to and with the other of them, his executors and administrators, by these presents, in manner following, that is to say: FIRST, the said C. D. doth hereby covenant, promise, and agree, to and with the said A. B., his executors and administrators, that he, the said C. D., shall and will, from time to time, and at all times, so long as he, the said C. D., shall continue master of the said ship or vessel, duly enter, or cause to be entered, in some convenient book or books, by him, the said C. D., to be kept for that purpose, a just and true account of all receipts, payments, and disbursements whatsoever by him, the said C. D., to be received and paid for, and on account of, the said ship or vessel, and the said employment thereof; and shall and will, once in every ---- months, deliver unto the said A. B., a true and faithful state of the said account or accounts by him to be kept as aforesaid; and also, shall and will, on the delivery

and statement of the said account or accounts, pay, or cause to be paid, unto the said A. B., his executors, administrators, or assigns, his, the said A. B.'s half part or share of all the profits, benefits, and advantages that may in anywise arise and be made by the said ship or vessel, and the employment thereof; and the said A. B. doth hereby, for himself, his executors and administrators, covenant, promise, and agree, to and with the said C. D., his executors and administrators, that, in case loss or damage shall at any time be suffered or sustained by and on account of the said ship or vessel and the employment thereof, that then, and in such case, the said A. B., his executors, administrators, or assigns, shall and will pay, or cause to be paid, unto the said C. D., his executors, administrators, or assigns, when thereunto required (proper vouchers and receipts being first delivered to him or them), his, the said A. B.'s, one-half part or share of all such loss or damage so to be suffered or sustained, as aforesaid And for the true performance, etc. In Witness, etc.

(323.)

Survey of a Ship and Furniture.

We, A. B. and C. D., shipmasters, and E. F., shipwright, residents within the city of -----, State of -----, do hereby jointly and severally declare and attest, to all to whom it may concern, That, on the ----- day of -----, at the instance and request of G. H., master of the ship -----, of -----, of the burden of ----- tons or thereabouts, proceeded to, and on board, the said ship, to examine her hull, masts, yards, anchors, cables, rigging, running-rigging, and sails, and every other store to her belonging; and having carefully and particularly inspected, examined, and surveyed the same, do report that the said vessel's hull, masts, yards, etc. [*as the case may be*]. Taking into consideration the aforesaid state of the said ship, and the necessity of restoring her to a good and seaworthy condition, we would recommend that she be supplied with [*as may be required*].

Witness our hands, this ----- day of -----, 18--

(324.)

Notary's Certificate to the Foregoing.

STATE OF -----, }
City of -----, } ss.

I, F. B. D., a Public Notary, in and for the said City and State, duly constituted and sworn, dwelling in the said city, do certify, that before me personally appeared A. B., C. D., and E. F., who, being respectively sworn, did say the survey, set forth in the foregoing return, was made according to the best of deponents' skill and judgment, and that the facts therein stated are just and true.

In Testimony, etc.

(325.)

Notice of Abandonment.

Take notice, that I, A. B., of -----, etc., do hereby abandon, cede, and leave to you all my right, title, interest, claim, property, and demand of and in the Ship called the -----, of -----, of the burden of ---- tons, or thereabouts, and all and every part of her Cargo and the goods laden on board of her by me the said A. B., and do demand of you a total loss of the sum of ----- dollars, lawful money of the United States, by you underwrote on goods and merchandises laden on board the said ship by me, the said A. B. Value in goods.

(326.)

*Protest for not executing Charter-Party, according
to Memorandum of Agreement.*

By this Public Instrument of Protest, etc., that on this ----- day of -----, in the year ----, at the request of A. B. and C. D., of -----, I, F. B. D., of -----, etc., Notary Public, etc., went on board the ship or vessel called the -----, whereof E. F. is master, now lying in -----, and presented and exhibited to the said E. F. a memorandum of an agreement by him entered into and duly executed with the said A. B. and C. D., setting forth the particulars of an intended charter-party to be signed and executed by him, the said E. F., of the one part, and the said A. B. and C. D. of the other part, and demanded of him the fulfilling of the said memorandum of agreement, and to execute and sign the charter-party made and drawn according to the said memorandum of agreement, and which I then exhibited and presented unto him; and, upon his refusing to do the same, asked him the reason for such refusal; whereunto he answered [*the answer given*], which answer not being satisfactory, I, the said Notary, at the request aforesaid, have protested, and by these presents do solemnly protest, as well against the said E. F. as all others whom it shall or may concern, for all damages, costs, charges, expenses, or loss that may any ways be sustained by, or arise to, them, the said A. B. and C. D., on account of the said E. F. not fulfilling his said memorandum of agreement, and signing the said charter-party, and not having his vessel ready to proceed and sail on the voyages therein mentioned.

This done and protested, etc.

(327.)

*Protest for refusing to sign Bill of Lading for
Goods shipped at the Freight contracted.*

By this Public Instrument of Protest, etc., That on -----, etc., before me, F. D., a Notary Public, etc., personally came and appeared A. B., of -----, etc., who declared, and by these presents doth declare, that on the ---- day of ----- instant, he, this declarant, did agree with C. D., master of the ship called the -----, bound out and from this port of -----, for -----, in -----, to ship on board the said ship, for ----- aforesaid, ----- of -----, and to pay for the same at and after the rate of ----- And that he, the said declarant, did accordingly ship on board the said ship the -----, the said ----- of -----, and did afterwards exhibit to the said G. D. the receipt given by the chief mate of the said ship for the said ----- of ----- when the same was received on board the said ship, and required him to sign bills of lading for the same, pursuant to the said agreement. But the said C. D., master of the said ship the -----, refused to sign such bills of lading, demanding that the said declarant (*as the case may be*) should pay for the freight of the said ----- of ----- by the -----, contrary to the agreement above mentioned. And, therefore, the said declarant required me, the said Notary, to protest against the said C. D. for his not performing his said agreement, and for refusing to sign bills of lading pursuant thereto, and for all loss, damage, and detriment that may be sustained by reason thereof.

Whereupon I, the said Notary, in company with the said A. B., went to the said C. D., and demanded and required him to sign bills of lading for the said ----- of -----, shipped on board his said ship by the said A. B., and to insert therein,

that the freight should be paid for the same at the rate of ----- per ton, according to their said agreement; to which the said C. D. answered [*the answer given*]; which answer not being satisfactory, I, the said Notary, did declare that I would protest, and by these presents—at the request aforesaid—do solemnly protest, as well against the said C. D. as against all others whom it doth or may concern, for all loss, damage, and detriment which may happen or be sustained, for, or by reason or means of, the said C. D. refusing to sign bills of lading for the said ----- of -----, pursuant to the agreement above mentioned, and for what else can or ought to be protested, concerning the premises to be recovered, in time and place convenient.

Thus done and protested, etc.

(328.)

Protest for Breach of Charter-Party.

By this Public Instrument of Protest, etc.

That on, etc., before me, F. D., of, etc., Notary Public, etc.,
 ----- personally came and appeared A. B. and C. D., of,
 etc., who declared, that whereas, E. F., master of the ship or
 vessel called the -----, of the burden of ----- tons,
 or thereabouts, had, by charter-party, under the hand and seal
 of him, the said E. F., bearing date the ----- day of -----,
 instant, let the said ship unto the said appearers for a voyage
 with her to be made from this port of ----- to -----,
 in ----- And, whereas, in the said charter-party, among
 other things, it was agreed, that the said E. F. would depart
 with the said ship out of the -----, wind and weather
 permitting, on or before the ----- day of -----, instant,
 in order to proceed on the said voyage. And, whereas, they, the
 said appearers, having fully loaded the said ship [*as the case may
 be*], have, several times since the ----- day of -----,
 instant, ordered and required the said E. F. to depart and sail
 with his said ship out of the said -----, in order to pro-
 ceed on her said voyage; and, notwithstanding the said orders,
 he, the said E. F., hath hitherto neglected, and refused, and
 delayed to proceed on the voyage aforesaid, in manifest breach
 of the said charter-party: Therefore, they, the said appearers,
 requested me, the said Notary, to protest, as by these presents I
 do most solemnly protest, as well against the said E. F., as all
 others whom it may or doth concern, for breach of the said char-
 ter-party, in not sailing out of the said ----- to proceed on
 the said voyage, on or before the said ----- day of -----,
 instant; and for all costs, loss, damage, and detriment, which

they, the said appearers, have already suffered or sustained, or shall or may hereafter suffer or sustain, by reason of the said ship not departing and proceeding on her voyage as aforesaid, and for otherwise howsoever, and for what else the said appearers can, may, or ought to protest, to recover all the same in time and place convenient.

Thus done and protested, etc.

(329.)

Form of a Draft to be given by the Master of a Vessel to a Merchant, for Advances made for Repairs and Supplies. Said Draft is intended to preserve the Maritime lien of the Merchant on the Vessel, in case of Non-payment of his Claim.

Norfolk, Va., -----, 18.....

EXCHANGE \$3,000.

Sixty days after date of this, my first of exchange (second unpaid), please pay to the order of BROWN, SMITH, & Co., for value received, Three Thousand Dollars, which, when paid, will be in full, of cash disbursements and expenses incurred, for repairs and supplies furnished the ship "Monarch," under my command, bound on a voyage from Liverpool to Boston, Mass., and put into this port in distress, as advised.

Your obedient Servant,

CHARLES EVANS.

To

Messrs. FULTON, IRVING, & Co.,
Boston,
Mass.

TESTIMONIALS.

From HIS EXCELLENCY HENRY A. WISE, Governor of Virginia.

RICHMOND, VA., June 17th, 1857.

TO FRANCIS B. DIXON, Esq.:

Sir,—I have examined your work upon *Maritime Law*; and from the perusal I have been enabled to make of it, I judge it to be a valuable and very useful aid of the practitioner. It is a novel, succinct, and I believe, correct compendium of the principles of that branch of the profession of which it treats. You have my hearty thanks for the copy you have sent to me, and I commend your labors with the best judgment of,

Yours truly,

HENRY A. WISE.

From the HON. JAMES D. HALYBURTON, Judge of the District Court of the United States for the Eastern District of Virginia.

RICHMOND, VA., July 22d, 1857.

TO FRANCIS B. DIXON, Esq., NORFOLK, VA.:

Sir,—I have not had leisure until within the last few days to look over your work entitled "*An Abridgment of the Maritime Law*," with any degree of care.

It seems to me to state the law on most, if not all, the points to which my attention was attracted; and is a work,

which, in my opinion, owners and masters of vessels would find it much to their advantage to have.

It contains more information which would be valuable to them on a variety of subjects in which they have a deep interest, than can be found any where else, so far as I know, comprised within the same compass.

In order to obtain it from any other source with which I am acquainted, it would be necessary to wade through many volumes ; with a considerable expenditure of time, labor and money, for what may be had in a few hours with the aid of your volume, which is small, portable, and of easy and convenient reference.

It is calculated to be serviceable to merchants also, who reside in seaport towns and deal with vessels ; and, in consequence of the numerous authorities to which it refers, will be found highly useful to gentlemen of the bar.

Very respectfully,

Your obedient servant,

JAMES D. HALYBURTON.

From JUDGE BAKER, *Norfolk.*

FRANCIS B. DIXON, Esq. :

Dear Sir,—I have been prevented by other pressing duties since your "*Abridgment of the Maritime Law*" was placed in my hands, from examining it with care, but the evidence of its value, afforded by the letters of various legal gentlemen of distinction, which I have seen, and the slight examination I have been able to give it, satisfy me that the book will be a useful one to the profession, and especially so to Ship Brokers and Owners, and the mercantile community generally.

Respectfully,

RICHARD H. BAKER.

From JUDGE MEREDITH, Richmond.

F. B. DIXON, Esq., NORFOLK, VA.

Dear Sir,—I have examined your "*Abridgment of the Maritime Law*," and am highly pleased with its contents and plan of arrangement.

It will doubtless prove not only useful to the class of persons for whom it is particularly designed, but a valuable auxiliary to the legal profession.

Entertaining this opinion, I hope you may succeed in securing its publication.

Very respectfully,

Your obedient servant,

JNO. A. MEREDITH.

NORFOLK, VIRGINIA.

FRANCIS B. DIXON, Esq.

Sir,—We have examined your "*Abridgment of the Maritime Law*," and it affords us pleasure to testify to the merits of the work.

We regard it as a valuable auxiliary to the mercantile community.

To Ship Brokers and Merchants, as also to members of the legal profession, we think it will prove a desirable handbook for reference, as it furnishes, in a detached and condensed form, much valuable information on the law of shipping, which could previously be obtained only by wading through numerous volumes, with a considerable expenditure of time, labor, and money.

To owners and masters of vessels, it will prove an invaluable guide, and source of information, as it prescribes fully their rights and duties in all cases of shipwreck or disaster, removing a difficulty they have heretofore had of procuring advice on those subjects when it is most needed.

We therefore recommend your work to all who are in any

way connected with shipping, and shall be pleased to learn that you have been amply rewarded for the time and labor the compiling of it must have cost you.

Respectfully, &c.

HARDY & BROTHERS,	Merchants,	Norfolk.
J. M. SMITH & BROTHER,	"	"
RICHARD DICKSON,	"	"
DUNCAN ROBERTSON,	"	"
ALEXANDER BELL & SON,	"	"
S. T. SAWYER,	Collector of Customs,	"
T. F. FERGUSON,	Mayor, City of Norfolk.	"
HENRY IRWIN,	Pres't. Merch. Exch.,	"
ROWLAND & BROTHERS,	Merchants,	"
ROWLAND & REYNOLDS,	"	"
A. M. MCPHEETERS & CO.,	"	"
THOMAS P. CROWELL,	"	"
R. M. BALLS,	Port Warden,	"
ROBBINS & BATTLE,	Ship Brokers,	"
DULTON WHEELER,	"	"

Board of Surveyors and Reporters, appointed by the Philadelphia Board of Marine Underwriters, Office No. 22½ Philadelphia Exchange, July 31, 1858.

FRANCIS B. DIXON, Esq., Norfolk, Va.

DEAR SIR,—After a careful perusal of your work, entitled "An Abridgment of Maritime Law," a copy of which you were pleased to submit for the opinion of this Board, we feel much pleasure in stating, that we strongly recommend the same as a valuable manual for reference, and consider it particularly well adapted to assist the masters of vessels in determining the proper and legal course to be pursued, when placed in difficult circumstances consequent upon the stranding of a vessel, or damage to her cargo, &c., as well as in the many trying incidents which they are liable to encounter; and for which they frequently need legal advice. We are likewise of opinion, that this book combining as it does, in one convenient volume, information only to be obtained heretofore, by consulting a number of different authors, has long been needed by the mercantile community.

Approved by the Board.

THOMAS G. MUNROE, Sec'y.

C. GULAGER, *Chairman.*

From THOMAS M. NORRIS, Esq., Adjuster of Averages, Baltimore, Maryland.

FRANCIS B. DIXON, NORFOLK, VA.

DEAR SIR,—Your late publication entitled "Abridgment of the Maritime Law," has just been placed in my hands. I have only to say, that it is just such a book as I have for many years sought after in vain, up to this time.

From the casual perusal of its pages, and noticing the several subjects upon which it concisely treats, I would most unhesitatingly say, that to Merchants and Ship-Masters it must prove an invaluable assistant as a book of

reference, thereby preventing much indecision of action and the asking of so many questions, which my experience teaches me, they have been from time to time driven to ask for the want of a steady and reliable guide.

That so desirable a work will be widely circulated among our still growing mercantile community, I have not the slightest doubt. With much respect, I remain,

Your most obedient servant,

THOS. M. NORRIS,

Adjuster of Averages.

From JNO. THOMSON MASON, Collector of the Port of Baltimore, and late Judge of the Court of Errors, Maryland.

MY DEAR SIR,—As far as I have had time to examine your work, just published, upon Maritime Law, I find it an excellent treatise upon the subject. It appears to have been prepared with great care and accuracy, and I have no doubt it will prove a most valuable addition to the mercantile and maritime interests. I take pleasure in commending the work to the public.

I am, very respectfully,

Your obedient servant,

F. B. DIXON, Esq.

JNO. THOMSON MASON.

From the Norfolk Daily Southern Argus.

This is a most valuable work, and indispensable in the counting-room of a seaport. It is a carefully prepared abridgment of the Maritime Law, and supplies a want long felt by the mercantile community.

Mr. Dixon is a gentleman of marked ability, critically severe in his labors, and every way fitted for the duties he assumed in editing the work before us.



